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PROMOTING RESPONSIBLE CITIZENSHIP

REPORT TO THE MINISTER OF JUSTICE

MLA COMMITTEE MAKING RECOMMENDATIONS ON RESTRICTIONS ON PRISONER VOTING IN THE ALBERTA *ELECTION ACT*





LEGISLATIVE ASSEMBLY ALBERTA

November 16, 1998

Dear Mr. Havelock:

RE: Consultation on Prisoner Voting

We are pleased to submit to you the report of the MLA Committee on Prisoner Voting, titled; *Promoting Responsible Citizenship*.

Our committee has reviewed the issues relating to prisoner voting and have consulted with Albertans. We have also carefully considered possible amendments to the *Election Act*.

We trust that you will find our report contains a comprehensive analysis of prisoner voting together with a clear indication of the views of Albertans. We would hope that our recommendations will be of assistance in considering amendments to the Alberta Election Act.

Yours truly,

The MLA Committee on Prisoner Voting

Barry McFarland

MLA, Little Bow

Yvonne Fritz

MLA, Calgary Cross

Rob Lougheed

MLA, Clover Bar

Fort Saskatchewan

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ACKNOWLEDGMENTS

The Committee wishes to recognize the cooperation of the following:

The Japanese Consulate

The Danish Consulate

The German Consulate

The Greek Consulate

The Government of Australia

The Government of New Zealand

Mr. Mark Mauer -- Sentencing Project

Ms. Susan Kuzma, Pardon Attorney's Office, U.S. Department of Justice

Dr. Christopher P. Manfredi

Dr. Rainer Knopff

Mr. Brian Fjeldheim -- Chief Electoral Officer

Alberta Justice, Correctional Services Division

STATEMENT OF STATEMENTS

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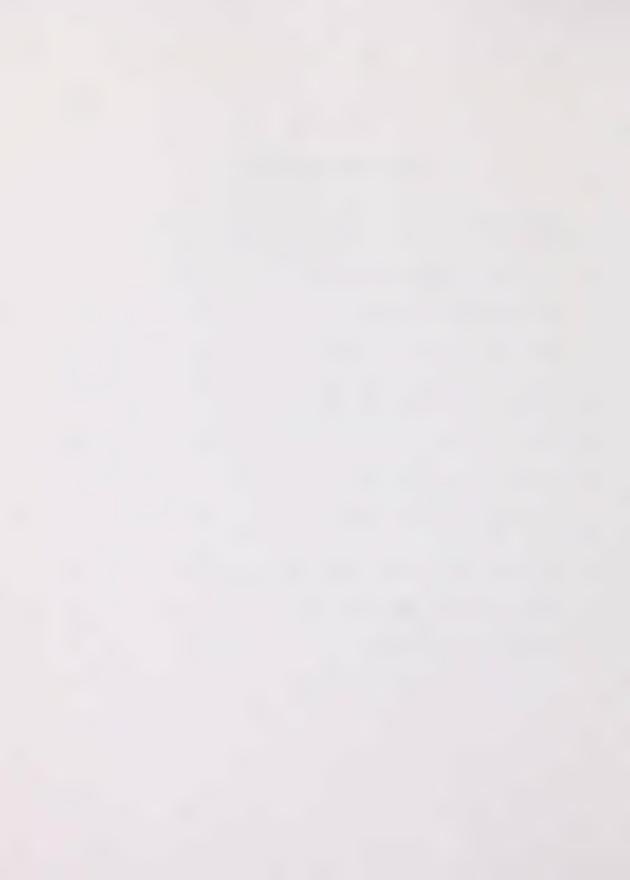
PART ONE



PART ONE

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I. EXECUTIVE SUMMARY

Throughout Alberta's history, inmates in the province have been prohibited from voting. The most recent legislation setting out this ban was s. 41(d) of Alberta's *Election Act*. On April 17, 1998, this section of the *Election Act* was struck down by the Alberta Court of Appeal in the case of *Byatt* v. *Dykema*. The Court found that Alberta's total ban on inmate voting was an overly broad restriction on the right of all Canadian citizens to vote, which is protected by the *Canadian Charter of Rights and Freedoms*. In its decision, the Court of Appeal was bound by an earlier decision of the Supreme Court of Canada called *Sauvé* v. *Canada (Attorney General)*, which struck down a virtually identical ban in place in the *Canada Elections Act*. 4

Despite finding the total ban on inmate voting unconstitutional, Justice Côté, who delivered the Court's decision, provided Alberta legislators with guidance as to what type of inmate voting ban would be found by the Court to be a reasonable limitation of this right. He suggested that the new law should allow the following to vote:

- inmates in jail after conviction but before sentencing,
- inmates serving sentences of ten days or less, and
- inmates in jail because they did not pay fines.

Justice Côté stated that if these changes were made, then Alberta's law would be readily distinguishable from the law which was struck in the Sauve case, and that "the amended ban on prisoner voting would likely be constitutional."

In response to the *Byatt* decision, the Alberta government decided to introduce amendments to the *Election Act* consistent with the direction provided by the Court of Appeal and which would also take into account the views of Albertans on this important subject. Although the Court of Appeal provided guidelines as to how the legislation should be amended, it was crucial to the Government and to Justice Minister Havelock that the views of Albertans on this subject be considered.

To that end, the Justice Minister appointed this MLA Committee. The mandate of the Committee was to determine the views of Albertans, determine the options on inmate voting supported by Albertans and the justifications for those options, and then recommend changes to the *Election Act* for the Minister's consideration.

¹R.S.A. 1980, c. E-2.

²(1998), 158 D.L.R. (4th) 644.

³[1993] 2 S.C.R. 438.

⁴R.S.C. 1985, c. E-2, s. 51(e).

The Committee invited and received numerous submissions on this subject. The majority of Albertans expressed the strong view that inmates should not be entitled to vote. They expressed this view through written submissions and telephone calls, as well as through the results of a telephone poll commissioned by the Committee. The poll showed clearly that 80% of Albertans disagreed that all inmates serving a jail sentence on election day should be allowed to vote in provincial elections. The Committee also considered lengthier submissions by various groups interested in the inmate voting issue, and by experts in the field. The Correctional Services Division of Alberta Justice and Alberta's Chief Electoral Officer provided very useful background information for the Committee's review.

Although the majority of Albertans are in favour of a total ban on inmate voting, the Committee understands that there must be compelling legislative objectives underlying any inmate voting ban, that the law in place must be directed toward achieving those objectives, and that the ban must not deprive more individuals of the right to vote than is necessary to promote those objectives.

After examining all the material before it, the Committee decided that an inmate voting ban should encourage respect for the rule of law, and participation in the electoral process. The Committee decided further that the *Election Act* should be amended so all inmates are prohibited from voting, except for those in prison awaiting sentencing, those in prison for 10 days or less and those in prison for defaulting on fines. It is the conclusion of the Committee that such a voting ban would promote these objectives.

In the Committee's view, Albertans appreciate the link between these inmate voting restrictions and the purposes behind the legislation. Although Albertans may not have phrased their own comments on the objectives of the ban in exactly the same way as we have framed our objectives, it was clear to the Committee from Albertans' submissions that they felt that those who have broken the law should not participate in the process which elects our lawmakers, and that allowing prisoners to vote would reduce the respect the rest of Albertans have for voting.

The Committee feels its proposals take into consideration the views of Albertans and the various options for law reform which were available to it. The recommended amendments create an inmate voting ban which represents the views of the majority of Albertans, achieves the stated objectives, and respects the guidelines provided by the Court.

Our Report consists of two Parts. Part One includes a description of the question we addressed, a review of our consultation with Albertans, and our recommendations to the Minister of Justice. Part Two of our Report was prepared with the assistance of legal counsel. Part Two sets forth our views on the legal and constitutional issues which arise in connection with the participation of prison inmates in Alberta elections. Part Two also records the legal, factual, and historical background upon which we base the recommendations contained in Part One of this Report.

II. BACKGROUND

A. Establishment of the MLA Committee

On September 25, 1998, the Minister of Justice announced the formation of an MLA Committee to examine the issue of prisoner voting. He appointed to this Committee Barry McFarland, MLA Little Bow (Chair), Rob Lougheed, MLA Clover Bar-Fort Saskatchewan, and Yvonne Fritz, MLA Calgary-Cross. The Minister also announced that the Committee was seeking public input on the issue of inmate voting by inviting written submissions and by conducting a province-wide poll (Appendix A).

B. Terms of Reference

The objectives of the Committee were specified in our terms of reference:

- Determine the views of Albertans on inmates voting in provincial elections.
- Determine what options Albertans support regarding inmates voting in provincial elections.
- Determine the justifications for the options Albertans support regarding inmates voting in provincial elections.
- Make recommendations to the Minister of Justice on amendments to the inmate voting provisions in the Alberta *Election Act*.

C. Process

The Committee members adopted the process described below, which we followed to its conclusion in the preparation of this Report:

- A province-wide professionally prepared poll was conducted to determine the views of Albertans on inmate voting (Appendix C).
- The Committee contacted interest groups and invited them to submit in writing their views on inmate voting.
- Advertisements were placed in all Alberta daily and weekly newspapers inviting written submissions to the Committee (Appendix B).
- The Committee received briefing and advice from legal counsel, particularly on Charter issues and the law in other jurisdictions.
- The Committee invited the Office of the Chief Electoral Officer and the Correctional Services Division of Alberta Justice to provide comments on the practical consequences of any amendments, including the mechanics of inmate

voting.

- The Committee received and reviewed the results of the province-wide poll and the written submissions.
- The Committee prepared this Report setting out our findings and making recommendations with respect to the inmate voting provisions of the *Election Act*, and forwarded this Report to the Minister of Justice.

D. Material Considered by the Committee

In arriving at our recommendations, the Committee considered material from a number of sources, as set out in Part Two of our Report:

- legislative and historical background of inmate voting,
- Canadian election laws,
- information about prisons in Alberta,
- information about inmates in Canada and Alberta,
- sentencing options and early release provisions,
- Canadian cases on inmate voting,
- inmate voting in other free and democratic countries,
- international conventions,
- submissions of Albertans,
- opinion poll,
- written submissions.
- expert reports,
- submissions of the Correctional Services Division of Alberta Justice (Appendix H), and
- submissions of Alberta's Chief Electoral Officer (Appendix G).

The Committee used all of this information to help it decide what recommendations to make about the limits on inmate voting in Alberta. The remainder of Part One of the Report summarizes the material considered by the Committee, and then sets out the Committee's specific recommendations to the Minister of Justice and our reasons for those recommendations.

III. CANADIAN CHARTER OF RIGHTS AND FREEDOMS

A. Charter Provisions

The relevant sections of the Charter read as follows:

- The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
- 3 Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.
- 52(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

B. What These Provisions Mean

The Committee understands that the Charter specifically protects the rights of citizens to vote, which means that any limitation on inmate voting must respect this right. Any limitation should not prevent more people from voting than is necessary to achieve the important objectives promoted by the Legislature.

The version of s. 3 which was nearly passed read:

Every citizen of Canada has, <u>without unreasonable distinction or limitation</u>, the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein (emphasis added).

Professor Hogg explained that the underlined words were deleted because they were "redundant having regard to s.1." Section 1 already allows for Charter rights to be limited, but only in ways that can be justified in a free and democratic society. Any law of Alberta which restricts voting must be designed to promote important objectives of the Legislature, and denying the right to vote must be connected in some way to those objectives.

⁵Canada Act 1982 Annotated at 19.

IV. INMATE VOTING LEGISLATION IN ALBERTA

A. Current Legislation

Section 41(d) of Alberta's *Election Act*,⁶ before it was struck down by the Court of Appeal, prohibited all inmates from voting:

- The following persons are not eligible to vote at an election:
 - (d) persons who have been convicted of an offence and as a result of that conviction are, on polling day,
 - (i) inmates of a correctional institution under the Corrections Act or a penitentiary under the Corrections and Conditional Release Act (Canada) as a result of being sentenced to a term of imprisonment, other than inmates resident in facilities designated as community residential centres under this Act by an order of the Minister of Justice and Attorney General, or
 - (ii) inmates of a correctional institution under the *Corrections Act* awaiting sentencing for which a term of imprisonment may be imposed.

B. Legislative History

The Committee has considered the detailed legislative and historical background of the inmate voting issue set out in Section 2 of Part Two of our Report. We were particularly struck by the fact that inmates have never had the right to vote in Alberta elections. In 1909, the first *Alberta Election Act* was enacted, and prohibited from voting:

[a]ny person who at any time during the period fixed by the proclamation of the Lieutenant Governor in Council for the preparation or revision of the list of voters or on the polling day at any election is a prisoner in gaol or prison, undergoing punishment for a criminal offence or is a patient in a lunatic asylum. ⁷

Although there were some changes in wording over the years, the effects of this provision remained essentially the same, with any inmate of a jail being prevented from voting. The current, longer wording came into force in 1983, and was the provision which was struck down by the Court of Appeal.

⁶Supra note 1.

⁷S.A. 1909, c. 3, s. 10(3).

V. INMATE VOTING LEGISLATION ACROSS CANADA

The Committee assessed the information provided in Section 3 of Part Two of our Report about inmate voting across Canada, and noted that besides Alberta, there are other provinces which completely ban inmate voting: Ontario, New Brunswick, Nova Scotia, and the Yukon Territory. Superior courts in both Alberta⁸ and Ontario⁹ have struck down these provisions as unconstitutional, because of the Charter right to vote. Ontario recently passed new legislation repealing its inmate voting ban; this legislation comes into force on January 1, 1999.

Canada, British Columbia, and the Northwest Territories have limited inmate voting bans, which prohibit only inmates serving sentences of two years or more from voting. The Federal Court Trial Division found that even with this limitation, the restriction was still invalid.¹⁰ The remaining provinces – Manitoba, Quebec, Newfoundland, and Prince Edward Island – all either specifically allow inmates to vote, or simply do not prevent them from voting.

⁸Byatt, supra note 2.

⁹Grondin v. Ontario (1988), 65 O.R. (2d) 427 (Ont. H.C.J.).

¹⁰Sauvé v. Canada(1995), 132 D.L.R. 136.

VI. INMATE VOTING LEGISLATION IN OTHER FREE AND DEMOCRATIC COUNTRIES

With respect to the weight which should be given to how other jurisdictions approach inmate voting, Côté J. remarked in the *Byatt* case:

I cannot omit one striking fact. The great majority of other countries studied bar at least longerterm prisoners from voting. That includes the most respected free and democratic countries. Indeed, many other jurisdictions have harsher restrictions which disqualify from voting more types of convicts and for longer periods. Some ban voting for life. But Alberta restores the franchise the day the prisoner stops sleeping in jail at night for any reason.¹¹

The Committee members believe it is important to take into account the experience of other free and democratic nations, and have done so in Section 8 of Part Two of our Report.

The Committee was impressed by the range of types of inmate voting bans in the various jurisdictions. Some jurisdictions, such as the United Kingdom, prevent all inmates from voting. Other jurisdictions use length of sentence to determine which inmates may vote; for example, Australia and many of its states ban voting for those serving sentences of five years or more, while some Australian states prohibit those with sentences of 12 months or more from voting. Some states in Australia and the United States of America allow all inmates to vote, but many are re-considering that legislation.

The other aspect of an inmate voting ban on which other jurisdictions have a range of legislation is the length of the voting ban. Many states in the United States of America prohibit voting for the length of the sentence, while others prohibit voting even while the offender is on parole or probation. Some states go so far as to require the offender to seek a pardon before voting rights are reinstated, and some states ban inmates from voting for life. The Committee was impressed by the fact so many free and democratic countries limit the rights of inmates to vote.

¹¹Supra note 2 at 663.

VII. GUIDELINES PROVIDED BY ALBERTA'S COURT OF APPEAL

As explained above, when Alberta's Court of Appeal found that s. 41(d) of the *Election Act* violated the Charter right to vote, Justice Côté provided guidance to the Alberta Legislature about how to structure an inmate voting ban. He raised various concerns with the existing ban.

A. Inmates Convicted But Awaiting Sentencing

Justice Côté found that people who had not been convicted could still vote under the *Election Act*, but that the law specifically prohibited those in jail after conviction but before sentencing from voting. He found that this was not sensible, because not all people awaiting sentencing actually receive any further jail time as part of their sentence.

B. Inmates in Jail for Failing to Pay Fines

Justice Côté also found the provision in the legislation dealing with people in jail for failure to pay a fine to be ambiguous. Because the section was ambiguous and because he doubted whether banning such inmates from voting would be justified under the tests for s.1 of the Charter, Justice Côté stated he would adopt the reading of the section in favour of the person wishing to vote, and advised the Legislature to clarify this ambiguity.

C. Inmates Serving Very Short Sentences

A third problem noted by Justice Côté was that the inmate voting ban under s. 41(d) applied to inmates serving very short jail sentences on polling day. He reasoned that these people could have committed relatively trivial offences, and that other inmates could vote in advance if they foresaw they were likely to be in jail on polling day. The ban only affected those arrested shortly before voting day. Justice Côté left the question of the precise length of the sentence before an inmate would be prohibited from voting to the Legislature to decide, although he suggested that 10 days might be an appropriate limit.

Justice Côté stated that if changes were made to address all these issues, then "that amended ban on prisoner voting would likely be constitutional."

VIII. CASE LAW IN CANADA

The Committee carefully examined the detailed analysis of the case law in Canada on the inmate voting issue set out in Section 7 of Part Two of our Report. We were most interested in the types of arguments accepted by Canadian courts, whether in upholding or attacking inmate voting bans.

A. Arguments in Favour of Inmate Voting Bans

1. The prison environment is not suited to free and democratic voting.

It seems to me that the restrictions imposed by imprisonment on freedom of the person, the close control which must be maintained by the State over association, assembly and discussion there, and the inevitable interference in free inflow and circulation of ideas, all of which are necessary to preservation of prison order and discipline, render it impossible for inmates to make the free and democratic electoral choice contemplated by the Constitution. The casting of a ballot under such conditions could not, in the context of the Charter, be described as an exercise of the "right to vote."

2. Prohibiting inmates from voting promotes good citizenship.

... the practical efficacy of laws relies on the willing acquiescence of those subject to them. The state has a role in preserving itself by the symbolic exclusion of criminals from the right to vote for the lawmakers. So also, the exclusion of the criminal from the right to vote reinforces the concept of a decent responsible citizenry essential for a liberal democracy.¹³

3. Inmates lose many rights, and voting is just one of them.

Losses or suspension of rights which occur when a citizen is lawfully imprisoned have always been accepted in Canada as a reasonable consequence of lawful imprisonment. Again, I see nothing in the Charter which affects that result. Of all the rights which an inmate loses, the right to vote would hardly be considered as basic a right as that of association, of mobility and the general right of liberty. If imprisonment removes those basic Charter rights from inmates, how can it be argued that the words of section 3 of the Charter somehow must now be interpreted to restore to inmates a right to vote which they have never heretofore enjoyed in Canada. ¹⁴

¹²Jolivet v. Canada (1983), 1 D.L.R. (4th) 604 (B.C.S.C.) 607-608.

¹³Sauvé, supra note 10 at 600. See also Sauvé v. Canada (1995), 132 D.L.R. (4th.) (F.C.T.D.) at 152-153 and 158-159.

¹⁴Badger v. Canada (1988), 55 D.L.R. (4th) 177 (M.C.A.) at 193.

B. Arguments Against Inmate Voting Bans

1. A total ban is an unjustifiably wide-spread denial of a Charter right.

It is simply a blanket disqualification of absolutely everyone who happens to be in any penal institution at all, serving any sentence of imprisonment for any offence, serious or minor. Thus, for example, no culpable loss of the civic capacity to vote exists and, therefore, the requisite rational connection is absent in the case of a person who has been imprisoned for the inadvertent commission of an offence of absolute liability. Again, as regards the extent of impairment of the constitutional right, a minimal infraction of a regulatory statute which is penalized by a few days imprisonment may result in the effective loss for four years of more of the right to vote. ¹⁵

2. An inmate voting ban unfairly singles out inmates.

It is arbitrary in singling out one category of presumably indecent or irresponsible citizens to deny them a right which they otherwise clearly have under section 3. It is self apparent that there are many indecent and irresponsible persons outside of prison who are entitled to vote and do vote; on rare occasions some even get elected to office. On the other hand, there are many law-breakers who are never charged with offences, and a high percentage of those who are never imprisoned. Those who have been identified among the indecent and irresponsible by a sentence of imprisonment do not necessarily become decent and responsible upon release, although their voting rights automatically arise under the *Canada Elections Act.* ¹⁶

3. The legislative objectives are insufficient and merely symbolic.

Depriving inmates of the vote is not a ringing and unambiguous public declaration of principle. On the contrary it is an almost invisible infringement of the rights of a group of persons who, as long as they remain inside the walls are, to our national disgrace, almost universally unseen and unthought of. If, as I think, therefore, the alleged symbolic objective is one whose symbolism is lost on the great majority of citizens, it is impossible to characterize that objective as pressing and substantial.¹⁷

4. Inmates should have the right to vote for political reasons.

... the right to vote must be protected against those who have the capacity, and often the interest, to limit the franchise. Unpopular minorities may seek redress against an infringement of their rights in the courts.

¹⁵Badger, ibid. at 114. See also Belczowski v. Canada, [1991] 3 F.C. 151 (T.D.) at 174 and Sauvé, supra note 13 at 162.

¹⁶Belczowski, ibid. at 168-169.

¹⁷Belczowski v. Canada (1992), 90 D.L.R (4th) 330 (F.C.A.) at 341.

But like everybody else, they can only seek redress against a dismissal of their political point of view at the polls. 18

5. Inmates are capable of an informed vote even though they are in jail.

Many voters have chosen to live in a universe figuratively not much larger than a prison cell, and many inmates may be avid and astute consumers of the mass media made available to them.¹⁹

After considering all of these arguments, the Committee decided that the argument that prohibiting inmate voting promotes good citizenship was the most compelling of the arguments submitted in favour of inmate voting bans. The Committee did not find credible any of the five arguments attacking inmate voting bans.

¹⁸*Ibid.* at 649-650.

¹⁹*Ibid*. at 651.

IX. INFORMATION ABOUT INMATES IN CANADA

As part of its deliberations, the Committee reflected upon the general information about inmates in provincial and federal institutions provided at Section 5 in Part Two.

A. Average Prison Sentence

In 1996-97, the median sentence length of inmates in Alberta provincial correctional centres was 30 days.²⁰ In 1994-95, that length was 45 days, while in 1990-91 it was 30 days.²¹ The average sentence of federal inmates in 1994-95 was 44 months.²²

In 1996-97, 48% of inmates in Alberta provincial correctional facilities were in the institution for less than 31 days. Twenty seven% were in for less than 15 days, and 16% were in for less than eight days. In 1995-96, 45% of inmates in Alberta facilities were in the facility for less than 31 days, while in 1994-95, the number was 43%. For federal penitentiaries, 62% of admissions in 1996-97 were for over two years and under four years, while in 1995-96 and 1994-95 that figure was 63%. 4

B. Most Common Offences

In 1996-97, of all the inmates in provincial correctional institutions in Alberta, 70% were in for Criminal Code offences, five% for other federal offences (i.e. drug offences), and 21% for provincial statute offences. In 1995-96 and 1994-95, those numbers were 72%, six%, and 18%. In 1994-95, 4% of inmates in Alberta facilities were in jail for breaking municipal bylaws. This pattern of distribution of types of offences has been in place since at least 1990-91. 26

²⁰Statistics Canada, Adult Correctional Services in Canada 1996-97 (1998) at 51.

²¹Statistics Canada, Adult Correctional Services in Canada 1994-95 (1996) at 59.

²²*Ibid*. at 83.

²³1998 Report, supra note 62 at 50.

²⁴*Ibid*. at 73.

²⁵*Ibid.* at 48-49.

²⁶1996 Report, supra note 63 at 56-57.

C. Intermittent Sentences

From 1990 to 1997, approximately 11% of inmates in Alberta facilities were serving intermittent sentences.²⁷ This is a type of sentence permitted by the Criminal Code (s. 732(1)) when a total sentence is less than 90 days, and it usually means that the inmate serves his or her time on the weekends. These inmates would ordinarily be free to vote, because elections are usually held on weekdays and they would therefore be in the community on polling day. Because federal inmates are all serving two years or more, none of them could be serving intermittent sentences.

D. Fine Defaulters

In 1996-97 in Alberta, 35% of the total sentenced admissions were for fine default.²⁸ In 1994-95, that number was 36%.²⁹ Although this number seems high, it does not mean that 36% of those actually in jail at any one time are in for defaulting on fines; it means that many people actually admitted to prison are admitted for that. Usually, their actual time in jail is very short.³⁰

E. Prisons in Alberta

1. Provincial Institutions

In Alberta, there are provincial jails operated under provincial legislation, as well as federal jails operated under federal legislation. There are nine camps, eight correctional centres, four remand centres, two hospital wards, two community correctional centres, and one community residential centre designated as correctional institutions under regulations to Alberta's *Corrections Act.*³¹

²⁷1998 Report, supra note 62 at 51 and 1996 Report, supra note 63 at 59.

²⁸1998 Report, supra note 62 at 48-49.

²⁹1996 Report, supra note 63 at 56-57.

³⁰*Ibid.* at 18.

³¹Designated Correctional Institutions Order, Alberta Regulation 72/88.

2. Federal Institutions

The Correctional Service of Canada operates six penitentiaries in Alberta: one minimum security facility (Bowden Annex), three medium security facilities (Bowden Institution, Drumheller Institution, and Grand Cache Institution), one maximum security facility (Edmonton Institution), and one women's institution (Edmonton Women's Institution).³²

3. Application of Voting Legislation to Inmates in Alberta

Inmates whose total sentences are two years or more generally serve their terms in federal penitentiaries. Offenders with total sentences of less than two years usually serve their time in provincial or territorial correctional centres. Alberta's *Election Act* applies to all inmates in Alberta, whether in federal or provincial institutions, but only with respect to provincial elections (not federal ones). The *Canada Elections Act* applies to all inmates in Alberta who wish to vote in federal elections (whether they are in federal or provincial institutions in Alberta).

³²Corrections and Conditional Release Act, S.C. 1992, c. 20, as amended.

X. SENTENCING AND EARLY RELEASE OF OFFENDERS

A. Sentencing Options

The Committee evaluated the sentencing options available under Part XXIII of the Criminal Code, as set out in Section 6.1 of Part Two, to gain an understanding of the types of sentences available besides a prison term. The Committee noted particularly the large range of options available in sentencing an offender, from absolute and conditional discharges to probation, suspended sentences, and fines. Imprisonment is the most serious sentence available, and the Committee noted that it is mandatory only for the most serious offences.

The Committee was also interested in the fine payment options available to an offender, through which an offender may earn enough credits to pay off the fine. An offender who does not pay on time may be imprisoned. This is not the usual course, however:

There are . . . a number of important safeguards to attempt to ensure that the offender is not imprisoned merely because of an inability to pay the fine. A warrant of committal shall not be issued until the time for payment has expired and only where the court is satisfied the less intrusive measures in ss. 734.5 [refusal to issue license, etc.] and 734.6 [civil enforcement] are not appropriate in the circumstances, or that the offender has "without reasonable excuse" refused to pay the fine or discharge it to a fine option program.³³

Courts are usually prepared to grant offenders ample time to pay if a fine is imposed.

B. Early Release

As the material in Section 6.2 of Part Two explains, most offenders do not remain in jail for their full sentence. Offenders may be released on full parole after serving one-third of their sentence, while those serving sentences of less than two years may be eligible for day parole after serving only one-sixth of their sentences. Various types of temporary absences are also available, include temporary absences of up to 15 days, supervised work release for an indefinite time period, or unescorted temporary absences for up to 60 days at a time. Most inmates are automatically released from prison after serving two-thirds of their sentence (s. 127(3)).

An inmate released on full or day parole, statutory release, or unescorted temporary absence is still considered under sentence until the full term of the sentence has expired (s. 128(1)). That person will no longer, however, be an inmate under s. 2(1) of the *Corrections and Conditional Release Act*. This means that such an offender could vote, because Alberta's *Election Act* denies the vote to inmates of correctional institutions or penitentiaries.

³³Martin's Annual Criminal Code 1999, at 1231.

XI. VIEWS OF ALBERTANS

A. Poll Results

A poll of a random representative sample of 800 adult Albertans was conducted by way of telephone survey on September 24 - 29, 1998. The polling company, Angus Reid, indicated that one can say with 95% certainty that the results are within +/- 3.5 percentage points of what they would have been had the entire province been polled. The complete poll is attached as Appendix C to our Report.

Some of the more noteworthy findings of the poll are listed below:

- Eighty-six% of Albertans are aware that the Canadian Charter of Rights and Freedoms guarantees the right of Canadian citizens to vote in the election of federal members of Parliament and provincial members of the Legislative Assembly.
- Sixty-four% of Albertans were aware that there was a lawsuit related to prisoners voting in Alberta elections.
- Sixty-seven% of Albertans believe that prisoners should be denied the vote in order to promote respect for the rule of law.
- Seventy-six% of Albertans disagree with the statement that in a free and democratic society all prisoners should be allowed to vote.
- Seventy-three% of Albertans disagree with the notion that prisoners should be allowed to vote because it will promote lessons about responsible citizenship.
- Approximately 80% of Albertans disagree that all prisoners serving a jail sentence
 on election day should be allowed to vote in provincial elections (this includes
 those who initially disagreed, and those who disagreed after receiving more
 information).
- Twenty-two% of Albertans who agree that all prisoners serving a jail sentence on election day should be allowed to vote believe that allowing prisoners to vote promotes rehabilitation.
- Sixty-two% of Albertans hold the opinion that the government's proposed changes to the Alberta Election Act are "about right".

- Eighteen% of Albertans believe that the government's proposed amendments to the Alberta Election Act allow too many prisoners to vote.
- Nineteen% of Albertans believe that the government's proposed amendments do not allow enough prisoners to vote. Roughly half of this group or approximately ten percent of Alberta believe that all prisoners should be allowed to vote.
- Seventy-seven% of Albertans agree that persons on parole should be allowed to vote.
- Sixty-eight% of Albertans agree that those serving a total of ten days or less should be allowed to vote.
- Sixty-one% of Albertans agree that those in jail for not paying a fine should be allowed to vote.
- Eighty-five% of Albertans agree that those convicted of crimes against people like murder, manslaughter or rape should not be allowed to vote.

Albertans were clearly supportive of the government's proposed changes to the *Election Act*, with 62 % feeling they are "about right", and 18% believing that even fewer inmates should be allowed to vote than is being proposed. Only 19% felt that these proposals do not allow enough inmates to vote.

B. Submissions to the Committee

The Committee received a total of 545 submissions (81 e-mail, 105 faxes, 88 telephone calls, 271 letters or petitions) (Appendix D). The high percentage (84%) of people who took the time to write out their comments is a good indication of the strength of their feelings on the issue. The overwhelming majority of respondents, 95.04% (518 people), were opposed to allowing all inmate to vote. Only 4.22% of the respondents (23 people) were entirely in favour of inmate voting.

Albertans' views on the issue of inmate voting focus around several main arguments.

1. Arguments of Albertans in Favour of an Inmate Voting Ban

• One of the consequences of committing a crime is losing your rights, and inmates should lose their right to vote, just like they lose other rights in jail.

- Inmates should be punished; they should not have all the same rights as and live better than the rest of law-abiding society.
- Rights come with responsibilities, and if you cannot live within the rules of society you should not be allowed the benefits.
- Giving inmates the vote may allow them to unfairly influence who is elected.
- If inmates cannot obey the law, they should not be part of the democratic process that elects lawmakers.
- Inmates do not have the opportunities to get enough information to make an informed vote.
- Inmate voting would be difficult and costly to administer, and taxpayers pay enough for inmates already.
- The right to vote should be earned, cherished, revered, and respected. Inmates have shown they do not respect this right enough to keep it. Giving it to inmates reduces the amount of respect people have for the right to vote.

2. Arguments of Albertans Opposing an Inmate Voting Ban

- Inmates are still citizens and should have the right to vote; it is an extremely important right.
- The more skills, responsibilities, and contact with the rest of their community inmates retain, the better they will reintegrate into society.
- Voting is not just a right, but a moral and political obligation.
- Voting will help teach inmates good citizenship and encourage them to conform with societal norms.

C. Written Submissions

The Committee received and considered several detailed written submissions.

1. The John Howard Society of Alberta, "Inmate Voting Rights"

The John Howard Society argued that granting the right to vote can contribute to the rehabilitation of offenders and to their reintegration into society:

There is no acceptable reason why any inmate should be denied the right to vote. Denying inmates the right to vote violates the Charter, serves no rehabilitative function and is one more form of discrimination against those who are poor and/or belong to a minority group. Contrary to popular belief, many inmates are politically well-informed. Further, conducting polls in institutions is relatively simple, inexpensive and completely non-threatening to the public. Allowing inmates to exercise their democratic right to vote encourages responsible citizenship, states symbolically that offenders are part of society and reduces the inequity caused by the chance timing of an offender's sentence.

2. Charles B. Davison

Mr. Davison, a lawyer, makes various arguments, including that the inmate voting ban is arbitrary in that some lawbreakers may get jail time while similar offenders do not; the ban does not provide any real deterrent to potential offenders; and voting helps inmates maintain ties to their community and helps them develop good citizenship. He concludes that:

... none of the reasons usually advanced for denying inmates the right to vote are so compelling or logically forceful as to justify removing, limiting, or restricting such an essential and fundamental aspect of citizenry in a democratic society.

On the other hand, there are a number of reasons why society might actually benefit from preserving the rights of inmates to vote, ranging from the rehabilitative and educational effect for at least some such inmates, to the encouragement which might result among the non-incarcerated members of society to ensure that they become more active voters – if only by actually casting a ballot on voting day.

Mr. Davison suggests that any restrictions on voting be imposed on a case-by-case basis, either by the judge at the time of sentencing, or else by an independent body whose function it is to decide this question.

3. Northern Alberta Constitutional Section of the Alberta Branch of the Canadian Bar Association

This section of the Canadian Bar Association examined the recent case law on inmate voting and various arguments which support an inmate voting ban, and concluded that

... the importance of the right to vote in our democratic system of government, the explicit protection of this right in the Charter of Rights and Freedoms and the case law developed by the courts in interpreting this right lead to the conclusion that no limitation of this right, even where prison inmates are concerned, will be justifiable.

4. Elizabeth Fry Society of Edmonton

The Elizabeth Fry Society argued that an inmate's losing the freedom to remain in the community at large is sufficient punishment; that voting maintains the connection between the offender and her community, and fosters reintegration at the conclusion of the sentence; and that a voting ban is arbitrary because many offenders remain in the community and able to vote, while many inmates have not even been convicted yet, or may be in jail for the economic inability to pay a fine. Their submission concluded:

We recommend the committee give the right to vote to all women and men involved in the justice system. Though they serve a correctional sentence, they still remain citizens of this province. While time in conflict with the law is temporary, one's status as citizen with its rights and responsibilities of voting should be permanent.

5. Alberta Civil Society Association

This organization is in favour of inmate voting restrictions, and criticized the recent case law:

There is no question that this is a simple case of judicial misinterpretation of section 3 of the Charter. There was no intention that the right to vote in section 3 be interpreted literally, with total disregard to established practices in Canada and other liberal democracies. Even if it were to be interpreted literally, the section 1 "reasonable limitations" clause easily saves the prohibition on prisoner-voting.

6. County of Kneehill

The County of Kneehill Council considered the issue at a meeting, and took the following position:

Council is not in favour of voting privileges for prisoners and considers a criminal to have lost the right to vote when convicted.

7. Alberta Seventh Step Society

This non-profit group committed to preventing re-offending by offering community programs submitted that all inmates:

should be allowed to vote any time during their sentence and should not be discriminated against for the length of their sentence.

D. Experts' Submissions

The Committee consulted with two experts in inmate voting for a review of the philosophical and policy considerations surrounding this issue, and has carefully reviewed the submissions themselves and the summary provided at Sections 10.4.1 and 10.4.2 of Part Two of our Report. The Committee was especially interested in Dr. Manfredi's explanation of how our society requires that people voluntarily obey the law and voluntarily vote, and that taking away the vote from inmates (who have violated society's most basic rules of behaviour) will encourage others to obey the law and vote. We also found Dr. Knopff's explanation of how an inmate voting ban helps to promote liberal democracy and the rule of law very instructive.

XII. SUBMISSIONS OF THE CORRECTIONAL SERVICES DIVISION OF ALBERTA JUSTICE

The submissions of the Acting Assistant Deputy Minister of the Correctional Services Division of Alberta Justice were useful to the Committee in terms of providing practical, factual information about inmate voting in Alberta.

A. General Comments

In his submission, the Acting Assistant Deputy Minister of the Correctional Services Division of Alberta Justice demonstrates that conducting a vote in a correctional centre may be disruptive:

Normal prison routines are geared to maintaining operational and security requirements, moving offenders to and from the Courts, and ensuring offender work and treatment routines are carried out. Procedures such as conducting an enumeration or having polling stations on site, disrupt these routines and must be designed and carried out in a way that can ensure the safety of the public (including elections personnel), correctional staff and offenders.

B. Inmates in Jail for Failing to Pay Fines

As of the end of September, 1998, there were 130 inmates incarcerated solely for the failure to pay a fine. The turnover of these inmates is ordinarily a number of days (i.e. three to five, except for those with very large fines), and they are encouraged to work off their fines either within the institution or outside of it through the fine options program, in which inmates are paid \$5.00 per hour to perform community service work. Some inmates are given a temporary absence as soon as possible to return to the community to do the work, while those for whom this option is inappropriate remain in the institution in the internal fine options program. The amount of time incarcerated will depend on the amount of the fine and how quickly the inmate can work it off. These inmates may be found at any of the correctional or remand centres throughout Alberta.

C. Inmates in Jail for 10 Days or Less

Also as of the end of September 1998, there were 51 inmates incarcerated for 10 days or less. Those with 10-day sentences generally serve one third of that time (three days or so)

D. Inmates in Jail Awaiting Trial

There were 636 inmates remanded awaiting trial at the end of September 1998. The average remand serves 11 days; however, this average is probably not very representative of the usual amount of time spent in remand, since there are many who are in and out very quickly, while there are others who may be in for a year or more. Most remand inmates are in Edmonton and Calgary. These centres have the greatest security, the most movement of inmates to and from Courts, and the highest offender turnover rates.

XIII. SUBMISSIONS OF ALBERTA'S CHIEF ELECTORAL OFFICER

The Chief Electoral Officer provided to the Committee valuable background information on legislation in this area generally, and on the practical features of voting, such as enumeration, registration, and voting procedures.

A. Recommendation

The Chief Electoral Officer's recommendation to the Committee was that:

a legislative change be introduced to allow inmates who have the right to vote, and anyone else who is not on the list of electors, to be eligible to complete a form requesting that they be placed on the list of electors for the specific purpose of being able to use a Special Ballot.

B. Voting Procedures in Alberta

There are several ways to vote set out under the *Election Act*.

1. Polling Stations

All eligible voters whose names appear on the List of Electors may go to their polling station on polling day and cast a ballot. This requires personal attendance, which is not possible for inmates (s. 84).

2. Advance Polls

Electors who are disabled, who will be absent on polling day, or who are certain election officials may vote in an advanced poll. Again, personal attendance is required, which is not possible for inmates (s. 93).

3. Mobile Polls

Treatment centres and seniors' lodges having at least 10 in-patients or residents may have mobile polls (ss. 117, 1(1)(t), and 1(1)(x)). Electors at a seniors' lodge must be on the List of Electors or sworn in and have their names added to the list. Electors at treatment centre must take the "Oath of Treatment Center Resident"

4. Special Ballot

This is the option preferred by the Chief Electoral Officer for inmate voting. The *Election Act* permits voting by Special Ballot for electors whose name appears on a List of Electors but who cannot vote at an advanced poll or on polling day for various reasons specified in the Act. The application and the Special Ballot forms are sent through the mail or other delivery, since no personal appearance is necessary. Inmates who are eligible to vote and are on the List of Electors may apply to vote by Special Ballot. Inmates who are not on the List of Electors may apply to have their name added to the List.

XIV. RECOMMENDATIONS OF THE COMMITTEE

A. Recommendations

The Committee has carefully studied the recommendations and justifications presented in Section 11 of Part Two of our Report, and we fully incorporate those comments here. A summary of the main points of the recommendations and justifications follows.

The committee recommends that the Legislative Assembly of Alberta enact an amendment to the Alberta *Election Act* which:

• in a preamble proclaims that:

Canada is founded on principles that recognize the supremacy of the rule of law and the value of a parliamentary system of government featuring representatives freely chosen by the people in a democratic election and responsible to them and an electorate aware of the importance of participating in the electoral process.

the Legislative Assembly of Alberta wishes to promote recognition of those principles among Albertans to the fullest extent possible, and

the Legislative Assembly of Alberta believes that, with a few exceptions, denying the right to vote to those whose disrespect for the rule of law has caused them to be imprisoned at the time of an election under The Election Act, preserves the integrity of those principles and promotes their recognition among Albertans;

- declares ineligible to vote persons who are serving a sentence of imprisonment of more than ten days on polling day, other than a person who is imprisoned solely because he or she failed to pay a fine;
- deletes section 41(d)(ii), the provision referring to inmates of a correctional institution under the Corrections Act who have been convicted but not yet sentenced; and
- declares that an inmate's ordinary place of residence is deemed to be the place where the inmate was ordinarily resident before imprisonment.

B. Justification for the Recommendation

1. Canadian Constitutional Standard

The Committee understands that the Legislative Assembly of Alberta cannot deprive inmates of the right to vote just because most Albertans think this is a good idea. An inmate voting ban will only be upheld if the Legislature can show that it had important purposes in mind when it enacted the ban, and that the ban is connected to and works toward those purposes. As well, the ban must interfere as little as is reasonably possible with individuals' right to vote; there should not be a less intrusive way to achieve the purposes. Finally, the Legislature must be able to show that the beneficial effect on society of an inmate voting ban outweighs its negative effect on inmates.

a. Legislative Purposes

We believe that denying the vote to inmates promotes two fundamental purposes which characterize free and democratic nations: the supremacy of the rule of law and the value of the electoral process.

i. The Supremacy of the Rule of Law

The first principle the inmate voting ban supports is the supremacy of the rule of law in a free and democratic nation. Our understanding is that the rule of law means the following:

First, that the law is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power . . .

Second, the rule of law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order.³⁴

The rule of law is important to Albertans and Canadians because we prefer to live in a community where we may freely pursue personal happiness without fear that others will harm us or our families. Unless almost all who reside in our community are prepared to abide by a code of conduct which respects the rights of all residents to pursue happiness, this state of happiness will be unattainable.

This view has been adopted by both the academics and the courts, as explained in Section 11.2.2 of Part Two of our Report. This position is exemplified in the following remarks by Justice Côté from the *Byatt* case:

³⁴Manitoba Language Rights Reference, [1985] 1 S.C.R. 721 at 748-49.

No society can survive merely by coercing its members. If even a significant minority of the population have no respect for the law, there are not enough constables, enough judges, or enough jails, to enforce that law. Canada survives and works only because the vast majority of residents of Canada respect the law and the values which it reflects. So they voluntarily obey the law. That is not symbolic. That is stark necessity.³⁵

The Committee submits that promoting respect for the rule of law is crucial to maintaining an orderly society.

ii The Electoral Process

The second legislative purpose of an inmate voting ban is promoting the value of the electoral process. The Committee recognizes the importance of a parliamentary system of government in which the people choose their representatives in democratic elections and those representatives are responsible to the people. The Committee also perceives the need for people to appreciate the importance of voting.

The Committee has carefully reflected upon the discussion of the case law and academic articles set out in Section 11.2.2 of Part Two of our Report, and we accept without reservation that citizens of a state governed by a parliamentary system have important obligations, as well as rights. We also recognize that it is desirable to increase the number of citizens who know that it is important to vote, and understand how their voting affects the well-being of a democracy. We have concluded further that these objectives are important enough to warrant overriding the right to vote.

Again, we find that Justice Côté's comments provide a good summary:

[s]ociety always has an interest in determining activity that subverts the very electoral process which founds a free and democratic society. Maintaining and enhancing the integrity of the electoral process is always of pressing and substantial concern in any society purporting to be free and democratic . . . Mandating a bar on voting strongly deters, generally and specifically. ³⁶

Given that voter turnout in Alberta is on average between 50% to 70% (see Section 2.2 of Part Two), this is a valid objective for legislators.

Before considering the means to achieve the objectives we have identified, we want to make it clear that there are certain goals which we do not recommend pursuing. We do not believe that the Alberta legislature should prohibit inmates from voting in order to punish them for breaking the law. Furthermore, we do not believe that the purpose of an inmate voting ban

³⁵Supra note 2 at 656.

³⁶*Ibid*. at 658.

should be to stigmatize or show contempt for prisoners. If punishment or stigmatization were the reason for a ban on voting, then we would have recommended that the ban take effect immediately upon conviction and follow the convict for a set period of time or for life.

b. Legislative Means

Our recommendations reflect our belief that banning inmate voting sends an unequivocal message to the community that the rule of law is a primary principle by which we live and that in a parliamentary system of government, an electorate aware of the importance of voting is indispensable. We understand, from our reading of the material in Section 11.2.3 of Part Two of the Report, that some courts have not seen this link between these objectives and an inmate voting ban, but in our opinion, the link is strong. We believe that most Albertans would see it our way, because our constituents have told us that they do. The Angus Reid poll also convinces us that we are justified in holding this view; the poll demonstrated that more than two thirds of respondents agreed that "[i]n order to promote respect for the law prisoners should not be allowed to vote."

As well, we also recognize that various courts and academics have accepted that there is a link, and we have reflected upon their views as set out in Section 11.2.3 of Part Two of our Report. These opinions echo our conclusion that an inmate voting ban demonstrates to society that criminal behaviour is not acceptable in a free and democratic society, and that it emphasizes the importance of voting as part of responsible citizenship. The fact that various judges and academics also see this strong link between an inmate voting ban and the purposes we have adopted above provides us with a high degree of comfort in concluding that the ban rationally promotes the legislative purposes.

c. Minimal Impairment

At the outset we must state our agreement with Chief Justice Fraser and Justice Côté's opinion in *Byatt* that the "competing interests here are the serving prisoners on one side, and all other citizens on the other." If inmates vote, the impact of every other citizen's vote will be diminished, a point made by Chief Justice Fraser and Justice Côté in *Byatt*.

The Committee has considered all the legislative solutions which have been adopted by various jurisdictions, as set out in Sections 3 and 8 of Part Two of our Report. We observed that there is a great diversity in the legislation in these different jurisdictions. After reflecting upon the wide range of possibilities available in determining which individuals should be prevented from voting, our recommendation to prohibit all inmates from voting except those serving

³⁷*Ibid.* at 661.

sentences of ten days or less and those in jail for the failure to pay a fine puts Alberta on the middle part of the legislative spectrum described in Sections 3 and 8.

Besides examining the law in other jurisdictions, we have also paid careful attention to the opinion of Chief Justice Fraser and Justice Côté in *Byatt*. The majority suggested that a law which may prohibit from voting those serving jail time for a "comparatively small offence" or a "comparatively modest offence" could not be defended.³⁸ Justice Côté also concluded:

There is another reason to exempt prison under (say) 10 days, unlike the present s. 41(d). In other words, another reason to disenfranchise those serving very short jail sentences. That is the evidence of advance or absentee polls. An astute accused valuing his right to vote (and not distracted by impending criminal charges) could take steps. Foreseeing that he was likely to be in jail on polling day, he could vote at an advance poll. Someone else given a long sentence would rarely be able to do so, because Alberta advance polls occur the full week before the general polls: see *Election Act*, s.94(3). Everyone who knew that he was to be tried or sentenced before polling day could either vote at an advanced poll, or adjourn his sentence until after polling day. It is not desirable to encourage people to postpone court proceedings. The only person with no chance to vote because of a short sentence would be someone arrested shortly before polling day.

So, it would be easier to justify prisoner disenfranchisement under s.1 if it excepted those serving very short sentences. That would also remove much of the problem about those in jail in default of paying a find. The precise cut-off point (such as 10 days) would depend on the mechanics of advance polls, and would have to be up to the Legislature. That decision might profit from looking at some statistics beforehand.³⁹

The Committee has done its homework. We have reviewed the statistics available to us and anticipate that an amendment in the form we recommend will allow approximately twenty percent of inmates in Alberta correctional institutions to vote. Our decision to adopt the ten day cutoff suggested by the Alberta Court of Appeal also meets the concern relating to advance polls, and to fine defaulters.

The Committee is not prepared to move the cutoff date any higher and as a result increase the number of inmates who have the right to vote. We refer specifically to all of the reasons for this set out in Section 11.2.4 of Part Two of our Report. We have concluded that this type of ban would not make a serious statement about the importance of the vote in a free and democratic society or the significance of the voluntary obedience to the rule of law. We are also keenly aware of how provisions for various forms of parole and temporary absence dramatically reduce the amount of time an offender is imprisoned.

We have carefully considered all the material available to us, including the experience of other free and democratic states, and the submissions of various groups who favour inmate

³⁸*Ibid*. at 653.

³⁹Ibid. at 653-654.

voting, and have concluded that no other measure exists which would deliver the forceful measure we wish to send and would be significantly less intrusive of the constitutional right to vote.

We also wish to comment on the proposal that the sentencing court deal with a voting ban as part of the sentence. We disapprove of this option because it does not set out a standard which will achieve the important goals we have set out. Further, it is our firm belief that it is legislators, and not judges, who should decide which inmates may vote. This is an issue which affects the entire community and needs to be resolved by elected representatives of the people. We appreciate that the case law in this area provides the Legislature, as described in Section 11.2.4 of Part Two, with some room to determine these issues. We also feel that legislators are in a better position than judges to consider all the data available and gauge the will of the people before making these decisions. At the same time, we appreciate the guidance Chief Justice Fraser and Justice Côté gave in *Byatt*. This "dialogue" has been helpful as we consider the constitutional options open to us.

d. Proportionality

We have reviewed the discussion of the case law set out in Section 2.5 of Part Two, and we understand that our recommendations on inmate voting must not have such severe negative effects that they cannot be justified by the legislative purposes we have identified. We recognize that our recommendation deprives inmates serving a sentence in excess of ten days of the right to vote, and we appreciate fully the importance of the right to vote.

We are also mindful, however, of the following considerations, that in our opinion, diminish the adverse effects of our recommendation on inmates. First, our recommendation does not deprive all inmates who serve sentences of more than ten days of the right to vote; it only affects those who are in jail on polling day. Second, the disqualification ends as soon as the inmate is no longer actually in jail, i.e. released on some form of parole or temporary release. Third, our decision to recommend the exclusion of fine defaulters means that a large number of inmates will be allowed to vote. Fourth, many offenders admitted to jail in Alberta will be released after serving ten days in prison. Fifth, unlike the law in many American states, our recommendation allows inmates to vote upon release without the need to secure a pardon. Sixth, inmates serving intermittent sentences will be able to vote. Seventh, inmates in Alberta have not had the right to vote in any of the twenty-four provincial general elections held since 1905. Inmate voting is not part of our democratic tradition, nor is it part of the democratic tradition of the United Kingdom parliament, the mother of all parliaments.

While we have been sensitive to the right section 3 of the Charter bestows on Canadian citizens, we have been careful during our deliberations not to lose sight of the purposes that the ban on inmate voting serves. We do not want the exceptions to the ban to undermine our ability to preserve the supremacy of the rule of law and a citizenry keenly aware of the importance of

participating in our democratic electoral process. Based on our analysis of the information provided in Section 11.4.5 of Part Two, we are confident that our recommendation can survive intense judicial scrutiny.

C. Conclusions

We believe that Canada is founded on principles that recognize the supremacy of the rule of law and the value of a parliamentary system of government featuring representatives freely chosen by the people in a democratic election and responsible to them and an electorate aware of the importance of participating in the electoral process.

We also believe that, with a few exceptions, denying the right to those whose disrespect for the rule of law has caused them to be imprisoned at the time of an election under the Alberta *Election Act* preserves the integrity of those principles and promotes their recognition among Albertans.

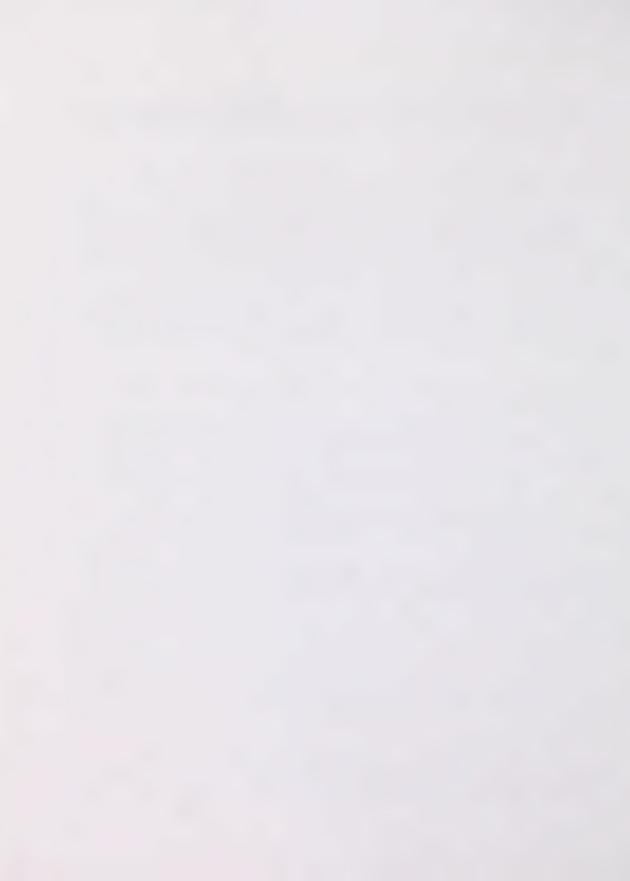
The opinion of Chief Justice Fraser and Justice Côté in *Byatt* reflects our views and those of Albertans with whom we have consulted:

On the Prairies, indeed across Canada, citizenship in the broad sense is real and alive. It is not a topic aired only in public service advertisements and then forgotten.

Some...say that they do not see the force of the allegedly symbolic nature of citizenship and in turn respect for the law. They suggest that therefore the people of Alberta or Canada would not see it either. Again, I must disagree. ... Members of the Canadian public know that the law (including the Charter) protects their own lives, health, liberties and property. They are not blasé on the subject, and rarely forget the intimate connection. ⁴⁰

Albertans agree with us that action is required to preserve the rule of law and the free and democratic system of government currently enjoyed in this province.

⁴⁰Supra note 2 at 657.







PROMOTING RESPONSIBLE CITIZENSHIP

PART TWO



PART TWO

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PART II

1. Introduction

Section 41(d) of the Election Act, R.S.A. 1980, c. E-2 ("Alberta Election Act") denies the vote to inmates of Alberta correctional facilities and federal penitentiaries serving sentences of imprisonment. A comprehensive ban against inmate voting has been in place since the creation of Alberta as a province in 1905.

Inmates serving a sentence of imprisonment never had the right to vote in an Alberta provincial election until the afternoon of February 27, 1997 when Justice MacKenzie of the Court of Queen's Bench of Alberta declared section 41(d) and part of section 113(1)(c) of the Alberta Election Act to be in contravention of section 3 of the Canadian Charter of Rights and Freedoms ("Charter") and of no force and effect. Byatt v. Alberta, 47 Alta. L.R. 3d 285.

The very next day, the Alberta government launched an appeal of Justice MacKenzie's decision and applied for a stay of the decision pending a hearing of the appeal. Justice O'Leary heard the stay application late in the day and ordered that the judgment of Justice MacKenzie be stayed until the Court of Appeal heard Alberta's appeal. As a result, inmates who were sentenced to imprisonment in Alberta were not entitled to vote in the Alberta provincial general election held on March 11, 1997. Byatt v. Alberta, 144 D.L.R. 4th 436. The Court of Appeal of Alberta heard Alberta's appeal on December 3 and 4, 1997.

On April 17, 1998 Chief Justice Fraser and Justices Côté and Conrad of the Court of Appeal of Alberta issued their reasons for judgment in <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644 (Alta. C.A. 1998). The panel unanimously agreed that the Supreme Court of Canada's decision in <u>Sauvé v. Canada</u>, [1993] 2 S.C.R. 438 striking down a similar federal law could not be distinguished and dismissed Alberta's appeal.

But Chief Justice Fraser and Justice Côté did not want to "make the Alberta Legislature play a game of Twenty Questions, having to guess whether the constitutional problem is curable, and if so how" and offered "some general comments about the constitutionality of not letting serving prisoners vote". Byatt v. Alberta, 158 D.L.R. 4th 644, 650. They were of the opinion that "not all bars on inmate voting would be unconstitutional, and the overbreadth of the Alberta legislation would be capable of easy amendment". Id. Chief Justice Fraser and Justice Côté suggested that inmates who had not been sentenced and who were serving a "very short jail sentence" had a constitutional right to vote. 158 D.L.R. 4th at 653. They also suggested that any legislative review should clarify whether those imprisoned on account of fine default had the right to vote. 158 D.L.R. 4th at 652-54.

Justice Minister Jon Havelock announced on April 23, 1998 that the "Alberta government will introduce legislative amendments to maintain a ban on prisoner voting". He said that the government believed it is "[fundamentally and philosophically ... wrong for sentenced prisoners ... to vote". After referring to the Court of Appeal's decision in Byatt, he noted that "the important point is the court agreed with us in general terms that sentenced prisoners can validly be prohibited from voting".

On September 25, 1998, the Justice Minister asked an MLA committee consisting of Barry McFarland, Rob Lougheed and Yvonne Fritz "to consult with Albertans and make recommendations regarding the issue of prisoner voting in Alberta". The recommendations of the committee are contained in Part I of this report.

Albertans tend to hold strong views on issues of the day and inmate voting is no exception. Most Albertans are of the opinion that those serving jail sentences on voting day should not have the right to vote. A poll conducted by the Angus Reid Group, Inc. and commissioned by the committee showed that approximately eighty percent of Albertans opposed allowing inmates to vote. Almost the same segment of those polled rejected the notion that inmates should be allowed to vote because it will promote lessons about responsible citizenship. Nearly two thirds of the sample dismissed the argument that inmates should be allowed to vote because it helps in their rehabilitation. These are the arguments proponents of inmate voting usually rely on.

An even larger percentage of Albertans who responded to an invitation to communicate their views to the committee were not in favour of sentenced inmates voting in elections conducted under the Alberta Election Act.

The polling results also showed that Albertans are well informed. Eighty-six percent of the respondents agreed that the Canadian Charter of Rights and Freedoms guarantees the right of Canadian citizens to vote in the election of federal members of Parliament and provincial members of the Legislative Assembly.

Albertans, almost without exception, believe that inmates should not be allowed to vote. And they do not believe that this is inconsistent with the celebrated status the vote has in the Canadian Charter of Rights and Freedoms.

Albertans obviously do not believe that the right to vote is absolute. As noted above, the Court of Appeal of Alberta said just that in <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644, 650 (1998).

A legislature in the Charter era cannot deprive a citizen of the right to vote in an election of a member of a legislative assembly just because most of the community thinks this is a good idea. Charter jurisprudence justifiably demands that a legislature which abridges fundamental rights, such as the right to vote in a provincial election, demonstrate the existence of compelling reasons before a court will validate the law.

The standard is high and should not be any other way. Any enactment of the Legislative Assembly of Alberta which incorporates the recommendations set out in Part I of this report will withstand intense political and judicial scrutiny.

Albertans understand the link between inmate disenfranchisement and the rule of law. In the Angus Reid poll more than two thirds of respondents agreed that "[i]n order to promote respect for the law prisoners should not be allowed to vote".

Charter jurisprudence acknowledges this nexus. In <u>Sauvé v. Canada</u>, 132 D.L.R. 4th 136, 157-58 (Fed. Ct. Tr. Div. 1995) Justice Wetston said this about the inmate voting ban in federal legislation:

It is reasonable to suggest that the provision sends a very strong message that certain forms of criminal behaviour are not acceptable in a society that is both free and democratic. I find the morally educative function of the law to be compelling. While this education may have little or no effect on the offender, it nevertheless sends a powerful message to society that ... serious crimes are inconsistent with liberal democratic purposes.

Justice Côté in <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644, 656 (Alta. C.A. 1998) was just as forceful in emphasizing the educative role of the law:

[W]hen interpreting the Charter, it is inappropriate to denigrate social aims and objectives as merely symbolic. Still less should one denigrate respect for the rule of law.

No society can survive merely by coercing its members. If even a significant minority of the population have no respect for the law, there are not enough constables, enough judges, or enough jails, to enforce the law. Canada survives and works only because the vast majority of residents of Canada respect the law and the values which it reflects. So they voluntarily obey the law. That is not symbolic. That is a stark necessity.

An effective standard must be chosen in order to remind Albertans how fundamental the rule of law is in Canada and how important an active electorate is in a democratic nation. If, for example, inmates sentenced to a term of imprisonment of less than thirty-one days were eligible to vote, this would give the vote to forty-eight percent of sentenced admissions to Alberta correctional institutions. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 51 (1998). Setting the cutoff point this high would make it impossible for legislators to say with a straight face that the inmate disenfranchisement rule is intended to deliver an important message. Furthermore, the provisions of the Corrections and Conditional Release Act, S.C. 1992, c. 20 dramatically reduce the amount of time an offender is imprisoned. For example, an offender who is serving a sentence of less than two years is eligible for day parole after serving one sixth of the sentence. Most inmates will serve less than four months in prison.

There are a number of reasons for choosing the standard approved by Chief Justice Fraser and Justice Côté stated in <u>Byatt</u>: the only inmates who have a constitutional right to vote are those who have not been convicted or sentenced or are serving very short jail sentences. First, Chief Justice Fraser, Justice Côté, Justice Wetston and the opinions of academic experts support the view that inmate disenfranchisement sends a forceful and unmistakable message to the community that respect for

the rule of law and participation in the electoral process is important. Any of the options which allow more inmates to vote would dilute the impact of that message. Second, the Angus Reid poll shows that four out of five Albertans support a ten day cutoff. The poll shows that sixty-two percent of respondents believe that a ten day cutoff is "about right" and that another eighteen percent would support a rule that denies even more inmates the vote. Third, inmates who are in jail solely on account of their failure to pay a fine are in the same class as those with very short sentences of imprisonment. Individuals in either group may vote if they arrange their affairs in order to do so. If such inmates were not excluded from the ban on voting, they may be prevented from voting by circumstances which have nothing to do with the sentence imposed upon them.

2. Legislative and Historical Background

2.1 Legislative History of the Alberta Election Act

Inmates have never had the right to vote in Alberta provincial elections.

In 1909, the Legislative Assembly of Alberta enacted the first election act (The Alberta Election Act, S.A. 1909, c.3). Section 10(3) of The Alberta Election Act stated that

[a]ny person who at any time during the period fixed by the proclamation of the Lieutenant Governor in Council for the preparation or revision of the list of voters or on the polling day at any election is a prisoner in gaol or prison, undergoing punishment for a criminal offence or is a patient in a lunatic asylum could not vote. (Emphasis added).

There was one election before The Alberta Election Act was passed. It was held on November 9, 1905. The 1905 election was conducted in accordance with The Territories Election Ordinance, N.W.T. Ord. 1905, c. 3. The Alberta Act, S.C. 1905, c. 3, s. 14.

The law governing voting by prisoners in the North West Territories in 1905 was found in The Forfeiture Act, 1870, 33 & 34 Vict., c. 23 s. 2. That Act provided that a prisoner convicted of treason or a felony and sentenced to a penal institute was incapable of "exercising any right of suffrage or other parliamentary or municipal franchise whatever within England, Wales, or Ireland". The Forfeiture Act came into force on July 4, 1870, and English law was received into the North West Territories on July 15, 1870. North-West Territories Amendment Act, S.C. 1886, c. 25, s. 3.

Professor Peter Hogg has explained the rule governing the reception of English law in his text Constitutional Law of Canada 2.4 - 2.6 (looseleaf ed.): "[I]f a statute was in force in England at the date of reception, then (unless it was unsuitable to the colony) it was imported to the colony." There can be no doubt that The Forfeiture Act was suitable for the colonies, as the common law rules of forfeiture which were abolished by The Forfeiture Act also applied in the colonies. See <u>In re Bateman's Trust</u>, L.R. 15 Eq. 355, 361 (1873).

The part of The Alberta Election Act dealing with prisoner disenfranchisement remained the same until 1924. In 1924, the wording was slightly modified. The Alberta Election Act, S.A. 1924, c. 34, s. 15(3). The disqualification language took this form:

Persons who at any time during the period fixed for the preparation or revision of the list of voters or on the polling day at any election are in gaol or prison undergoing punishment for criminal offences, or who are patients in a lunatic asylum.

Although minor modifications were made to the disqualification provisions of subsequent Alberta Election Acts, no change in the wording of the inmate disqualification occurred until 1956.

The 1956 act (The Election Act, S.A. 1956, c. 15) introduced the following change:

- 16. The following persons are disqualified to be registered as electors and shall not vote:
 - (d) a person undergoing punishment as an inmate of a penal institution for the commission of an offence.

Between 1956 and 1980, there were no modifications to the language of the inmate disqualification rule.

In 1980, the Election Act, S.A. 1980, c. 61 was enacted. The wording of the inmate disqualification was amended to read

- 41. The following persons are not eligible to vote at an election:
- (d) persons who are, on polling day, inmates of penal institutions.

In 1983, section 41(d) was repealed and replaced with the following:

- (d) persons who have been convicted of an offence and as a result of that conviction are, on polling day,
 - (i) inmates of a correctional institution under the *Corrections Act* or a penitentiary under the *Penitentiary Act* (Canada) as a result of being sentenced to a term of imprisonment, other than inmates resident in facilities designated as community residential centres under this Act by an order of the Solicitor General, or
 - (ii) inmates of a correctional institution under the *Corrections Act* awaiting sentencing for which a term of imprisonment may be imposed.

In 1994, section 41(d) was amended by striking out "Solicitor General" and substituting "Minister of Justice and Attorney General". Government Organization Act, S.A. 1994, c. G-8.5, s. 28.

There have been no changes to section 41(d) after 1994.

2.2 History of Inmate Voting in Canada

Historically, electoral rules and procedure have always been established by the legislature. Over the last several centuries of parliamentary government, a tradition of evolutionary democracy has developed. The majority of this evolutionary change has been the sole responsibility of the legislatures. Only the legislatures have been in a position to establish qualifications and to replace such qualifications when deemed appropriate. See <u>Saskatchewan Electoral Boundaries Reference</u>, [1991] 2 S.C.R. at 186-87 and <u>Dixon v. British Columbia</u>, 59 D.L.R. 4th 247, 264-65 (B.C. S.C. 1989).

Two of the most common qualifications are also the most ancient: mature age and the absence of criminal activity. For example, in ancient Greece "criminals pronounced infamous were prohibited from appearing in court, voting, making speeches, attending assemblies and serving in the army". Special Project, "The Collateral Consequences of a Criminal Conviction", 23 Vand. L. Rev. 929, 941 [1970]. The Norman conquerors found essentially the same civil disabilities when they arrived in England in 1066. At 942.

Reasonable restrictions such as age and inmate status have been referred to as pragmatic or obvious exclusions. Justice McLachlin used those terms in <u>Dixon v. British Columbia</u>, 59 D.L.R. 4th at 262. Justice Noel turned to the same language in <u>Reid v. Canada</u>, [1994] F.C.J. No. 99 at 27-29 (T.D.): "Pragmatism dictates that 'reasonable restrictions' such as age and mental capacity be imposed on the right to vote. In other words, the right to vote is subject to 'obvious exclusions' such as those extending to minors."

Just because a restriction is obvious does not mean that it will necessarily be respected. The history of minors sitting in the House of Commons is a good illustration. Prior to the Parliamentary Elections Act of 1695, minors were not refused a seat in the House of Commons, even in the face of a challenge. Erskine May's Treatise on the Law, Privileges and Proceedings and Usage of Parliament 40-41 (21st ed. 1989). After 1695, the qualifying age was restricted by legislation to 21 and older.

The Constitutional Act, 1791, 31 Geo. 111, c. 31, s. XXIII, the enactment which established Upper and Lower Canada, provided that "no Person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces ... who shall have been attainted for Treason or Felony in any Court of Law within any of his Majesty's Dominions" This norm continued in force after the passage of The Union Act, 1840, 3&4 Vict., c. 35, s. XXVII.

Voter eligibility rules in place in Ontario, Quebec, New Brunswick and Nova Scotia prior to July 1, 1867 continued to determine who was entitled to vote for members of the House of Commons in the new Dominion of Canada. Constitution Act, 1867, 30 & 31 Vict., c. 3, s. 41. There was no uniform federal standard on voter eligibility until The Electoral Franchise Act, S.C. 1885, c. 40 was passed. While there is no provision in The Electoral Franchise Act which expressly denies the vote to those convicted of treason or felony, it is very likely that the disqualification introduced in Upper

and Lower Canada by The Constitutional Act, 1791 and continued in Ontario and Quebec by The Constitution Act, 1867 was incorporated into the 1885 act by this phrase in section 3(1) setting out the qualifications of a voter: "Is of the full age of twenty-one years, and is not by this Act or any law of the Dominion of Canada, disqualified or prevented from voting".

When the Liberals formed the government in 1896, they set out to restore the old provincial voting eligibility rules for federal elections. This was done with the passage of The Franchise Act, 1898, S.C. 1898, c. 14. There were some national standards set out in the 1898 act. One was contained in section 6(4) which denied the vote in a federal election to "[a]ny person who, at the time of an election, is a prisoner in a jail or a prison undergoing punishment for a criminal offence".

The prohibition against prisoner voting in federal statutes may be traced from its current form (An Act to amend the Canada Elections Act, S.C. 1993, c. 19, s. 23(2)) back to the 1898 act (Dominion Elections Act, R.S.C. 1906, c. 6, s. 67(d); Dominion Elections Act, R.S.C. 1927, c. 53, s. 30(f); Canada Elections Act, R.S.C. 1952, c. 23, s. 14(2)(f); Canada Elections Act, R.S.C. 1970 (1st Supp.), c. 14, s. 14(4)(e); Canada Elections Act, R.S.C. 1985, c. E-2, s. 51(e)).

The following chart illustrates the percentage of voter turnout in Alberta general elections since 1905. Historically voter turnout in Alberta has, with a few exceptions, not been high. The lowest ever recorded voter turnout occurred in 1986. A mere forty-seven percent of eligible voters cast their vote in the 1986 general election. The highest voter turnout occurred in 1935 when almost eighty two percent of eligible voters cast their ballot.

Percentage of Voter Turnout in Alberta General Elections

Election	Voter Turnout (%)	
1997	53.76	
1993	60.21	
1989	53.60	
1986	47.25	
1982	66.00	
1979	58.71	
1975	59.58	
1971	71.98	
1967	64.30	
1963	56.10	
1959	63.90	

Election	Voter Turnout (%)
1955	68.00
1952	59.40
1948	63.40
1944	69.20
1940	74.80
1935	81.80
1930	66.70
1926¹	67.00

1. Information was not available for elections held in 1921, 1917, 1913, 1909 and 1905

2.3 Limitations on Membership in Legislative Assemblies

While the right to cast a ballot has been denied to felons or inmates through specific legislation applicable to Canada since 1791, there has not been a similar legislative restriction on membership in Parliament or the legislatures. Why this dichotomy? There is an explanation. It relates to the privileges of Parliament and the legislative assemblies. The House of Commons and provincial legislatures have by convention taken away the seat of members who have been convicted of serious crimes and sent to prison. However, these assemblies have also been careful to guard their privilege to make an independent decision subject only to their own discretion on a case by case basis. Even the mere arrest of a member of a legislative assembly is carefully scrutinized before approval of the arrest is forthcoming.

Historically in Canada and in England, Parliament has expelled or replaced members who are convicted of serious crimes and imprisoned. In addition, on many occasions the offenders have acted honourably and have resigned before Parliament took action. For example, John Charles Rykert resigned his seat in the Canadian House of Commons in May of 1890 after a damning House of Commons Committee report disclosed evidence of influence peddling. Debates of the House of Commons ("Debates"), May 2, 1890, columns 4355-56. As well, Louis Mathias Auger resigned his seat in 1929 after being charged with a criminal offence. Debates, March 21, 1929, p. 1196.

The first member of the Canadian House of Commons to be removed from office for criminal activity was Louis Riel. On April 16, 1874 the House of Commons voted to expel Louis Riel because he was "charged with murder, and a Bill of Indictment for said offense [was] found against him, and warrants issued for his apprehension, and the said Louis Riel ... fled from justice, and ...

failed to obey an Order of [the] House that he should attend in his place on Thursday, the 9th day of April 1874". Journals of the House of Commons ("Journals"), April 16, 1874, pp. 69-71.

On February 24, 1875 the House of Commons again voted to expel Louis Riel (after he was elected again) and to declare his seat vacant. Debates, February 24, 1875, p. 306-22. In the debate leading up to the vote, Sir John A. MacDonald said that he "agreed with the Minister of Justice" that "there was sufficient evidence before the House on which to expel Louis Riel ...[T]he seat was not void, [instead] it was absolutely necessary to expel Louis Riel, because until he was expelled, he had the same right to take his seat in the House as any other member had. He agreed ... that the record ... was sufficient to establish that Riel was a fugitive from justice and that the same cause of expulsion existed now as existed last session". Debates, February 24, 1875, at 312.

Another incident of note is the case of Fred Rose, M.P. While a member of Parliament, Fred Rose was arrested and ultimately convicted of a violation of the Official Secrets Act. He was then sent to prison.

At the time of the arrest of Fred Rose by the Royal Canadian Mounted Police, a member of Parliament expressed concern in the House of Commons about the proper procedure when such an arrest is made. The concern was the privileges of Parliament. The member quoted Beauchesne's Parliamentary Rules and Forms (3rd ed. 1943) as authority for his concern:

Several acts suspending for a time the Habeas Corpus Act have been passed in Great Britain with the special provision that no member of Parliament shall be imprisoned during the sitting of parliament until the matter in which he stands suspected shall be first communicated to the house and the consent of the house obtained for his commitment, or if Parliament be not sitting, then immediately after it reassembles in like manner as if he were arrested on criminal charge. This is the general rule. The house is usually apprised of the cause of commitment of a member after his arrest and whenever he is in custody, or after he has been committed for any criminal offence by a court or a magistrate.

In response, the Prime Minister advised the House of the details of the arrest and quoted from a legal opinion on the subject commissioned by the Justice Department. The opinion read in part:

The right of courts to enquire into the question of privilege is discussed by Bourinot at page 147 as follows:

As parliamentary privileges rest on statutory as well as customary law it follows that they can be inquired into and determined by courts of law like any other rights. In other words of an authority: 'It seems now to be clearly settled that the courts will not be deterred from

upholding private rights by the fact that questions of parliamentary privilege are involved in their maintenance; and that, except as regards the internal regulation of its proceedings by the house, courts of law will not hesitate to inquire into alleged privileges, as they would into local custom, and determine its extent and application'. It would appear that a member who has committed an indictable offence is therefore liable to arrest at any time and any place except on the floor of the house when it is sitting.

Debates, March 15, 1946, at 1034-38.

On January 30, 1947, the Speaker of the House of Commons laid before the House a copy of the verdict and sentence of Fred Rose. The Prime Minister then presented the following motion which was agreed to:

That Fred Rose, member for Cartier, having been adjudged guilty of an indictable offence and sentenced to six years' imprisonment and not having served the punishment to which he was adjudged, has become and continues incapable of sitting or voting in this house, and it is ordered that Mr. Speaker do issue his warrant to the chief electoral officer to make out a new writ for the election of a new member to serve in the present parliament for the county of Cartier in the room of said Fred rose adjudged and sentenced as aforesaid.

Debates, January 30, 1947, at 1 - 2.

Sir Erskine May's Parliamentary Practice (7th ed. 1873) highlights the grounds upon which Parliament in England has taken similar action:

Expulsion is generally reserved for offences which render members unfit for a seat in Parliament, and which, if not so punished, would bring discredit upon Parliament itself. Members have been expelled, as being in open rebellion; as having been guilty of forgery; of perjury; of frauds and breaches of trust; of misappropriation of public money; of conspiracy to defraud; of corruption in the administration of justice, or in public offices, or in the execution of their duties as members of the house; or conduct unbecoming the character of an officer and a gentlemen; and of libels, and various other offences committed against the house itself.

See also Erskine May's Parliamentary Practice (21st ed. 1989).

Bourinot's Parliamentary Procedure and Practice 148 (1884) confirms that the power of Parliament to expel a member is undoubted. Bourinot goes on to stress that "the House of Commons of England has also always upheld its dignity and declared unfit to serve in Parliament such persons as have been convicted of felony". At 149.

The English law today is summarized in Halsbury's Laws of England para. 1104 (4th ed. 1980): "The course to be followed if a member is convicted of an offence is, therefore, a matter for the House, which might decide to expel him".

The current Parliamentary practice in Canada is the same as in Britain. Beauchesne's Parliamentary Rules & Forms 16 of the House of Commons of Canada (6th ed. 1989) asserts that "there is no question that the House has the right to expel a member for such reasons as it deems fit". Furthermore, such matters are solely within the jurisdiction of the legislatures. Stubbs v. Steinkopf, 49 W.W.R. 759, 760 (Man. Q.B. Chambers 1964); MacLean v. Nova Scotia, 76 N.S.R. 2d 296 (Tr. Div. 1987); Wallace v. British Columbia, [1978] 1 W.W.R. 411, 416-18 (B.C. Sup. Ct. 1977).

The right of a legislature to expel a member for illegal activity was upheld in the face of a constitutional challenge in <u>Harvey v. New Brunswick</u>, [1996] 2 S.C.R. 876. In that case, the Supreme Court of Canada said that the right to vote in section 3 did not prevent a legislature from depriving one of its members of a seat upon conviction for illegal electoral activity.

3. Canadian Election Laws

Election acts in Alberta (Election Act, R.S.A. 1980, c. E-2, s. 41(d)), Ontario (Election Act, R.S.O. 1990, c. E-6, s. 16), New Brunswick (Election Act, R.S. N.B. 1973, c. E-3, s. 43(2)(e)), Nova Scotia (Elections Act, R.S. N.S. 1989, c. 140, s. 29) and the Yukon Territory (Elections Act, R.S. Y., 1986, c. 48, s. 5(d)) disenfranchise inmates serving sentences of imprisonment. However, superior courts in Alberta (Byatt v. Alberta, 158 D.L.R. 4th 644 (C.A. 1998)) and Ontario (Grondin v. Ontario, 65 O.R. 2d 427 (H.C.J. 1988)) have declared the parts of the electoral laws depriving inmates of the right to vote in these provinces unconstitutional.

The Ontario Legislative Assembly has recently passed the Election Statute Law Amendment Act, S.O. 1998, c. 9, s. 3 and repealed the inmate disenfranchisement rule. The act received royal assent on June 26, 1998 and comes into force on January 1, 1999.

Several jurisdictions do not allow inmates serving sentences of two or more years to vote. Canada (An Act to amend the Canada Elections Act, S.C. 1993, c. 19, s. 23(2)), British Columbia (Election Act, R.S. B.C. 1996, c. 106, s. 30) and the Northwest Territories (Consolidation of Elections Act, R.S. N.W.T. 1988, c. E-2, s. 27(3)(c)) are in this group. However, in <u>Sauvé v. Canada</u>, 132 D.L.R. 136 (1995) the Federal Court declared the federal election law invalid.

Election acts in Manitoba (Elections Amendment Act, S.M. 1998, c. 4, s. 21), Quebec (Loi Electorale, L.R.Q. 1989, c. E-3.3), Newfoundland (An Act to amend the Elections Act, 1991, S.N. 1991, c. 13, s. 86(2)) and Prince Edward Island (Election Act, S.P.E.I. 1996, c. 12) either expressly allow inmates to vote or do not expressly disenfranchise them.

Survey of Current Canadian Election Statutes
- Inmate Disenfranchisement

Jurisdiction	Inmate Disenfranchisement		All	Some
	Yes	No	Sentenced Inmates	Sentenced Inmates
Alberta 1	1		1	
British Columbia	/			1
Canada 1	1			1
Manitoba		1		
New Brunswick	1		1	
Newfoundland		1		
Northwest Territories	1			
Nova Scotia	1		1	
Ontario 1, 2	1			
Prince Edward Island		/		
Quebec		1		
Saskatchewan	1		1	
Yukon	/		1	

Legislation declared unconstitutional

² New legislation in force January 1, 1999

4. Correctional Institutions and Federal Penitentiaries in Alberta

Alberta operates the following correctional institutions under the Alberta Corrections Act, R.S.A. 1980, c. C-26:

- 1. Bow River Correctional Centre
- 2. Calgary Correctional Centre
- 3. Calgary Remand Centre
- 4. Edmonton Remand Centre
- 5. Fort Saskatchewan Correctional Centre
- 6. Lethbridge Correctional Centre
- 7. Medicine Hat Remand Centre
- 8. Peace River Correctional Centre
- 9. Red Deer Remand Centre

Statistics Canada, Adult Correctional Services in Canada 1994-95, at 46 (1996).

The Correctional Service of Canada operates six penitentiaries in Alberta under the Corrections and Conditional Release Act, S.C. 1992, c. 20, as amended. One is a minimum security facility (Bowden Annex), three are medium security facilities (Bowden Institution, Drumheller Institution, and Grand Cache Institution), one is a maximum security facility (Edmonton Institution), and one is a women's institution (Edmonton Institution for Women). The service operates approximately fifty institutions in Canada.

Persons whose aggregate sentences are two years or over serve their sentences in penitentiaries. Criminal Code, R.S.C. 1985, c. C-46, s. 743.1(1)(2) ("Criminal Code"). Offenders with an aggregate sentence of less than two years are the responsibility of provincial or territorial correctional services. Criminal Code, s. 743.1(3).

5. Information About Inmates in Canada

Statistics Canada publications provide useful information about persons whose sentences bring them to provincial correctional institutions and federal penitentiaries, including the following important facts about inmates of these correctional institutions and penitentiaries:

- a. In 1996-97, the median sentence length on admission to Alberta correctional institutions was thirty days. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 51 (1998). The median sentence length in 1994-95 was forty-five days. In 1990-91 the median sentence length was thirty days. Statistics Canada, Adult Correctional Services in Canada 1994-95, at 59 (1996). The average sentence length of federal inmates was forty-four months in 1994-95. Statistics Canada, Adult Correctional Services in Canada 1994-95, at 83 (1996).
- b. In 1996-97 forty-eight percent of sentenced admissions to Alberta correctional institutions were for less than thirty-one days. Sixteen percent were for less than eight days and twenty-seven percent were for less than fifteen days. In 1995-96, forty-five percent of admissions were below thirty-one days. In 1994-95, the number was forty-three percent. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 50 (1998). Approximately sixty-two percent of admissions to federal penitentiaries in 1996-97 were for over two years and under four years. In 1995-96 and 1994-95, the rate was approximately sixty-three percent. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 73 (1998).
- c. In 1996-97, seventy percent of sentenced admissions to provincial custody in Alberta were for Criminal Code offences, five percent for contravention of other federal statutes (Food and Drug Act and Narcotics Control Act), and twenty-one percent for breaches of provincial statutes. Statistics Canada, Adult Correctional Services in Canada 1996-97 at 48-49 (1998). In 1995-96 and 1994-95, seventy-two percent of sentenced admissions to Alberta correctional institutions were attributed to offences under the Criminal Code. Another six percent were attributable to contraventions of other federal statutes (Food and Drug Act and Narcotics Control Act) and eighteen percent for provincial offence violations. In 1994-95, a mere four percent of sentenced admissions to provincial custody were for breaches of municipal bylaws. This distribution pattern has been in place since at least 1990-91. Statistics Canada, Adult Correctional Services in Canada 1994-95, at 56-57 (1996).
- d. Eleven percent of sentenced admissions to Alberta correctional institutions in 1996-97, 1995-96 and 1994-95 were intermittent sentences. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 51 (1998). This had been more or less the case since at least 1990-91. Statistics Canada, Adult Correctional Services in Canada 1994-95 at 59 (1996). Section 732(1) of the Criminal Code allows a court that imposes a sentence of ninety days or less to order that the sentence be served

intermittently. Martin's Annual Criminal Code 1999, at CC/1216 (1999) states that this "form of sentence is often imposed to permit the offender to continue employment, and for example will permit the offender to live at home during the week and serve the sentence on weekends". Given that federal penitentiaries house those with sentences of two or more years, no inmate of a penitentiary would be serving an intermittent sentence.

- e. In Alberta in 1996-97, thirty-five percent of the total of sentenced admissions were for fine default. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 48-49 (1998). In 1994-95, thirty-six percent of the sentenced admissions were for fine default. Statistics Canada, Adult Correctional Services in Canada 1994-95, at 56-57 (1996). This number does not mean that thirty-six percent of the average daily inmate population was made up of fine defaulters. All it means is that a large number of persons are admitted to prison for fine default. They do not stay in jail long. According to Statistics Canada, "Generally, that time-to-be-served by fine defaulters is relatively short". Adult Correctional Services in Canada 1994-95, at 18 (1996).
- f. In Alberta in 1996-97, twenty-eight percent of convictions for federal offenses resulted in prison sentences, twenty-four percent resulted in probation and fifty-five percent resulted in a fine. Juristat, Canadian Centre for Justice Statistics, Statistics Canada at 9 (1997). The percentage data does not add up to one hundred percent as the sentences were not mutually exclusive.

6. Sanction Options

6.1 Possible Sentences

Part XXIII of the Criminal Code records the options from which a court may select when considering the appropriate consequence for a person who pleads guilty to or is found guilty of an offence under the Criminal Code. The options are set out below:

i. ii.	Section 730 Section 731	absolute and conditional discharges in lieu of conviction impose probation order only while suspending passing of sentence in addition to a fine, imprisonment or an absolute or conditional discharge
iii.	Section 734	impose fine alone or in addition to other sanctions
iv.	Section 737	victim fine surcharge
v.	Section 738	restitution to victims
vi.	Section 742.1	sentence of imprisonment of less than two years may be
		served in the community (conditional sentence)
vii.	Section 743.1	imprisonment
viii.		intermittent sentence of imprisonment
ix.	Section 743.6	delaying parole

A short explanation of a few of these sentence options is appropriate. It will explain why imprisonment is the sanction reserved for the worst offenders.

6.1.1 Absolute or Conditional Discharge

A court may grant an absolute or conditional discharge in all but the most serious offences. Criminal Code, s. 730(1). This option does not result in a conviction. Id.

6.1.2 Probation

If a court convicts a person, it may, if there is no minimum punishment prescribed for the offence, "suspend the passing of sentence and direct that the offender be released on conditions prescribed in a probation order". A sentence of this nature may also be imposed on an offender in addition to a fine or imprisonment of less than two years. Criminal Code, s. 731.

6.1.3 Fines

A court may sentence a person who has been convicted of an indictable offence to pay a fine, if the offence is not punishable by a minimum term of imprisonment and the court is satisfied that the offender is able to pay. Criminal Code, s. 734(1)(2).

A minimum term of imprisonment exists for the following offences:

i.	Section 85(3)	(using a firearm while committing or attempting to commit most indictable offences)
ii.	Section 202(b)(c)	(book making for second and subsequent convictions)
iii.	Section 203(e)(f)	(placing bets on behalf of others for second and subsequent convictions)
iv.	Section 220(a)	(causing death by criminal negligence)
v.	Section 235	(first or second degree murder)
vi.	Section 236(a)	(manslaughter with use of a firearm)
vii.	Section 239(a)	(attempt to commit murder with use of a firearm)
viii.	Section 244	(wounding with intent)
ix.	Section 255(1)	(impaired operation of a vehicle for second and subsequent convictions)
X.	Section 272(2)	(sexual assault with a firearm)
xi.	Section 273(2)(a)	(aggravated sexual assault with a firearm)
xii.	Section 279(1.1)(a)	(kidnapping with a weapon)
xiii.	Section 279.1(2)(a)	(hostage taking with a weapon)
xiv.	Section 344(a)	(robbery with a firearm)
xv.	Section 346(1.1)(a)	(extortion with a firearm)

A court that fines an offender must give the offender a copy of the order recording the fine and a written explanation of the fine option program and take other reasonable measures to increase the likelihood the offender understands the information that he will receive in writing. Criminal Code, s. 734.2.

An offender who enrolls in a fine option program may earn enough credits to discharge the sentence. Criminal Code, s. 736.

The court order must clearly set out the amount of the fine and how and when it is to be paid. Criminal Code, s. 734.1.

If the offender does not pay the fine on time, a warrant of committal directing the imprisonment of the offender may be issued. A warrant is not issued as a matter of course:

There are ... a number of important safeguards to attempt to ensure that the offender is not imprisoned merely because of an inability to pay the fine. A warrant of committal shall not be issued until the time for payment has expired and only where the court is satisfied the less intrusive measures in ss. 734.5 [refusal to issue license etc.] and 734.6 [civil enforcement] are not appropriate in the circumstances, or that the offender has "without reasonable excuse" refused to pay the fine or discharge it through a fine option program.

Martin's Annual Criminal Code 1999, at CC/1231 (1999).

Offenders often ask the court to impose a fine as opposed to a jail sentence and courts are prepared to grant offenders ample time to pay if a fine is imposed.

6.1.4 Imprisonment

A court may sentence a person who has been convicted of a summary conviction offence to imprisonment for six months or to a fine of up to \$2000 or both. Criminal Code, s. 787(1). The maximum term of imprisonment for nonpayment of a fine imposed by a summary conviction court is six months. Criminal Code, s. 787(2).

A person who is convicted of an indictable offence may be imprisoned for the period set out in the section of the Criminal Code creating the offence. For example, the sentence of a person convicted of first degree murder is imprisonment for life. Criminal Code, s. 235. A person convicted of the indictable offence of possessing a device for surreptitious interception of private communications is liable to imprisonment for no more than two years. Criminal Code, s. 191.

6.2 Early Release from Imprisonment

One would be mistaken to assume that a person who is sentenced to a term of imprisonment actually serves the sentence in prison. The Criminal Code and the Corrections and Conditional Release Act, S.C. 1992, c. 20 ("Corrections and Conditional Release Act"), contain many provisions which, if invoked, allow an offender to be released from a provincial correctional institution or a federal penitentiary long before the sentence has expired.

A review of the Corrections and Conditional Release Act indicates the conditions which must exist to allow an offender to serve part of his or her sentence outside a penitentiary or a correctional institution.

6.2.1 Full Parole

Section 120(1) of the Corrections and Conditional Release Act states that most offenders are eligible for full parole after serving the lesser of one third of the sentence or seven years. The National Parole Board or a provincial parole board may grant full parole, according to section 102 of the Corrections and Conditional Release Act, if it is satisfied that the release of the offender does not "present an undue risk to society" and "will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen".

The National Parole Board granted full parole to 2198 out of the 5186 offenders in provincial institutions and penitentiaries who applied for full parole in 1996-97. Solicitor General, Corrections in Canada 57 (1997).

6.2.2 Temporary Absences

There are three types of temporary absences under the Corrections and Conditional Release Act. An offender who is not likely to re-offend while outside a correctional institution or a penitentiary may be granted an escorted temporary absence of up to fifteen days. Corrections and Conditional Release

Act, s. 17. Those offenders eligible for an escorted temporary absence may be released on a supervised work release for an indefinite duration. Corrections and Conditional Release Act, s 18.

Most persons imprisoned in a penitentiary may be released on an unescorted temporary absence after they have served the greater of one sixth of their sentence or six months. Corrections and Conditional Release Act, s. 115(c). An offender serving a six year sentence may be released under this program after completing one year behind bars.

An offender may be released on an unescorted temporary absence for up to sixty days at a time. Shorter absences are contemplated if the offender is not eligible for the maximum period. Corrections and Conditional Release Act, s. 116.

6.2.3 Day Parole

Section 119(1)(d) of the Corrections and Conditional Release Act, states that an offender, who is serving a sentence of less than two years, is eligible for day parole after serving one sixth of the sentence. This means that an offender sentenced to six months imprisonment may be released on day parole after being in jail one month. The formula is more complicated for those serving sentences of two years or more. According to section 119(1)(c) "the portion of a sentence that must be served before an offender may be released on day parole is ... the greater of (i) the portion ending six months before the date on which full parole may be granted, and (ii) six months". This means that an offender sentenced to five years imprisonment is eligible for day parole after serving fourteen months and that an offender serving two years is eligible after serving six months. These rules are subject to qualification in certain cases.

An offender on day parole may be required to return at night to a penitentiary, a community-based residential facility or a provincial correctional facility. Corrections and Conditional Release Act, s. 99.

6.2.4 Statutory Release

Statutory release is a concept that sanctions the release of an offender, in most cases, who has served two-thirds of his or her sentence. Corrections and Conditional Release Act, s. 127(3).

6.2.5 General Information

An offender who is released on day or full parole, statutory release or unescorted temporary absence is still under sentence until the expiration of the sentence. Corrections and Conditional Release Act, s. 128(1). But an offender who is released from the penitentiary on day or full parole, statutory release or a temporary absence ceases to be an inmate under the Corrections and Conditional Release Act, s. 2(1). This is noteworthy because section 41(d) of the Alberta Election Act denies the vote to an inmate of a correctional institution or a penitentiary.

An offender whose parole or statutory release is terminated or revoked is returned to custody and must serve the rest of the sentence. Corrections and Conditional Release Act, s. 138(1). In some

situations an offender may be released even though returned to jail once before. Corrections and Conditional Release Act, s. 138(2).

Section 24 of the Corrections Act, R.S.A. 1980, c. C-26 stipulates that the National Parole Board constituted by the Corrections and Conditional Release Act has the authority to exercise in Alberta the same powers with respect to offenders serving sentences in Alberta as it does with respect to offenders in federal penitentiaries. It follows that it is the National Parole Board which has the jurisdiction to grant parole to inmates of correctional institutions in Alberta.

There are still some important decisions made under the Corrections Act, R.S.A. 1980, c. C-26 ("Corrections Act") which affect inmates of provincial correctional institutions. For example, section 23(1) allows a person designated by the Minister of Justice to authorize the temporary absence of an inmate. A person temporarily absent from a correctional institution is deemed to be retained in custody while absent. Corrections Act, s. 23(2). One would think that if a person is deemed to be in custody, he would still be an inmate under the Corrections Act, and hence not be entitled to vote in an Alberta provincial election.

7. Canadian Jurisprudence on the Constitutional Validity of Prisoner Disenfranchisement

7.1 The Supreme Court of Canada's Decision in Sauvé No. 1

The Supreme Court of Canada in Sauvé v. Canada, [1993] 2 S.C.R. 438 [hereinafter Sauvé No. 1] declared section 51(e) of the Canada Elections Act unconstitutional. This provision denied the vote in federal elections to "every person undergoing punishment as an inmate in any penal institution for the commission of any offence". The court limited its explanation for its holding to these few words: "[S]ection 51(e) is drawn too broadly and fails to meet the proportionality test, particularly the minimal impairment component of the test, as expressed in the s. 1 jurisprudence of the Court'. [1993] 2 S.C.R. at 439-40.

Sauvé No. 1 settled a conflict in the case law on the validity of the longstanding Canada Elections Act ban on inmates' voting in federal elections. The Manitoba Court of Appeal (Badger v. Canada, 55 D.L.R. 4th 177 (1988)), the Ontario High Court of Justice (Sauvé v. Canada, 53 D.L.R. 4th 595 (1988)) and the British Columbia Supreme Court (Jolivet v. Canada, 1 D.L.R. 4th 604 (1983) had characterized the pervasive federal ban as a valid exercise of federal jurisdiction. Other courts expressed a contrary view. The Federal Court of Appeal and the Federal Court Trial Division (Belczowski v. Canada, 90 D.L.R. 4th 330 (Fed. C.A. 1992) aff'g [1991] F.C. 151 (Tr. Div.)) and the Ontario Court of Appeal (Sauvé v. Canada, 89 D.L.R. 4th 644 (Ont. C.A. 1992)) declared the federal law unconstitutional.

The debate in the case law is most informative and we have presented a detailed review of the relevant cases in the following part of the report.

7.2 British Columbia Cases in 1982 and 1983

Reynolds v. British Columbia, 32 C.R. 3d 274 (B.C. S.C. 1982) may be the first opportunity a Canadian court had to think about how the Canadian Charter of Rights and Freedoms affected the right of an inmate to vote. The Charter came into effect April 17, 1982. This decision was released on December 23, 1982.

Mr. Reynolds invoked section 3 of the Charter in a challenge to the validity of section 3(1)(b) of the British Columbia Election Act. He wanted to vote and stand as a candidate in a provincial election. The provision he attacked denied him the right because he was on probation. Justice Macdonell made the declaration Mr. Reynolds sought. His reasons for siding in favour of Mr. Reynolds are short:

I am not persuaded that there is any public benefit demonstrated for prohibiting a person not in custody, but while on probation, from being registered as a voter or from voting in a provincial election. The democratic process has not been impaired in other provinces or in federal elections because persons on probation have been permitted to vote.

32 C.R. 3d at 278.

Justice Macdonell made it clear that his decision only benefitted those who were not in prison. He said that it "requires little imagination to see the practical reasons why a prisoner in custody should not be entitled to vote". 32 C.R. 3d at 279.

The Attorney General of British Columbia appealed the judgment of Justice Macdonell.

Justice Taylor, of the British Columbia Supreme Court, had to deal with another constitutional complaint filed by a inmate before the decision of the appeal court in <u>Reynolds</u> was handed down. That complaint was raised in <u>Jolivet v. Canada</u>, 1 D.L.R. 4th 604 (B.C.S.C. 1983).

In <u>Jolivet v. Canada</u> two inmates serving time at the federal Kent Penitentiary pleaded that section 14(4)(e) of the Canada Elections Act contravened section 3 of the Charter. Justice Taylor dismissed their petition.

The inmates lost because Justice Taylor did not believe that prison conditions allowed the freedom and democracy necessary for a free election. Part of his reasons are set out below:

Mr. Sauvé [Deputy Commissioner/Security for the Canadian Penitentiary Service] foresees in the publication of voters' lists a danger to the safety of inmates whose anonymity has until now been preserved from others. He attests to the explosive, or inflammatory, personalities of certain inmates and of the danger which he believes would be created if electioneering activities were permitted among such persons in the prison setting. He mentions serious difficulties which he foresees resulting from the presence of canvassers - or persons claiming to be canvassers - within the prisons. He says there would inevitably be "allegations or counter-allegations of interference with the political process" if electioneering were conducted in such a setting.

It must, I think, have been difficulties of this sort to which Mr. Justice Macdonell referred, in the <u>Reynolds</u> decision, as the justification for denial of the franchise to prison inmates.

It seems to me that the restrictions imposed by imprisonment on freedom of the person, the close control which must be maintained by the State over association, assembly and discussion there, and inevitable interference in free inflow and circulation of information and ideas, all of which are necessary to preservation of prison order and discipline, render it impossible for inmates to make the free and democratic electoral choice contemplated by the Constitution. The casting of a ballot under such conditions could not, in the context of the Charter, be described as an exercise of the "right to vote".

1 D.L.R. 4th at 607-08.

The British Columbia Court of Appeal decided the <u>Reynolds</u> case on May 25, 1984, after Justice Taylor's judgement in <u>Jolivet</u> was filed.

Chief Justice Nemetz and Justice Carrothers dismissed the appeal. They were satisfied the British Columbia law preventing persons on probation from voting was unconstitutional. The Chief Justice believed that a person who was not incarcerated should "be given the opportunity of starting his reintegration into society". 11 D.L.R. 4th at 384. He assumed without deciding the point that Justice Taylor's opinion in <u>Jolivet</u> was sound. 11 D.L.R. 4th at 384.

Justice Craig, in dissent, held that the limit in the British Columbia Election Act was reasonable. He believed that the Charter imposed obligations on persons as well as benefits:

The Charter deals with the rights and freedoms of citizens, including the right of a citizen to vote in a federal or provincial election. It does not specifically mention the obligations of a citizen. Obviously, however, its premise is that a citizen who has rights also has obligations. The preamble preceding s.1 of the Charter states that "Canada is founded upon the principles that recognize the supremacy of God and the rule of law". A citizen must obey the law. If he does not, he is in breach of his duty as a citizen. Society should have the right to impose reasonable sanctions on a citizen who commits a crime, other than the sanctions authorized by criminal law

11 D.L.R. 4th at 386-87.

One draws from these early Charter cases decided by British Columbia courts that the legislative judgment depriving criminals of the vote did not strike them as an unreasonable or inexplicable way to limit an important right generally available to adult Canadian citizens.

7.3 Federal Court of Canada Cases in 1984 and 1985

The first sign that some Canadian judges might be uncomfortable with the proposition that inmates had no right to vote under the Charter came from the Federal Court of Canada. Justice Reed, in Gould v. Canada, 42 C.R. 3d 78, 81, decided on August 29, 1984, less than a week before the Canadian general election of September 4, 1984, to allow a Joyceville Penitentiary inmate to vote in the federal election. She made no general order in favour of other inmates. This was an application for interlocutory relief and the judge acknowledged that the constitutionality of section 14(4)(e) of the Canada Elections Act would ultimately be "determined in the normal trial process". 42 C.R. 3d at 85.

Justice Reed did not find the reasoning in <u>Jolivet</u> convincing, writing that "there is a logical fallacy somewhere in that argument". 42 C.R. 3d at 82. Of greater interest is the nature of the defence Canada mounted in the short time it had to prepare its case. It appears that Canada claimed granting federal inmates the vote would "constitute a threat to good order, security and administration of federal penal institutions". 42 C.R. 3d at 81. This is not the position adopted by those who defended

the limits on inmates rights in the British Columbia cases. In <u>Jolivet</u> and <u>Reynolds</u> the spectre of coerced voting in the prisons was raised. There cannot be a free vote in a prison setting.

Canada successfully appealed to the Federal Court of Appeal on August 31, 1984, two days after Justice Reed issued her decision. A divided appeal court held that Justice Reed erred in granting Mr. Gould relief. 13 D.L.R. 4th 485, 490. The appeal court judges did not express an opinion on the substantive constitutional issue.

The Supreme Court of Canada heard the inmates' appeal and dismissed it, adopting the reasons of the majority in the Federal Court of Appeal. [1984] 2 S.C.R. 124.

<u>Levesque v. Canada</u>, 25 D.L.R. 4th 184 (Fed. Ct. Tr. Div. 1985) is the next case to consider the constitutional voting rights of inmates. The plaintiff was in a federal penitentiary in Quebec and wanted to vote in the Quebec provincial election on December 2, 1985. (The Quebec Election Act did not prohibit inmates from voting.). Federal authorities refused to cooperate with Quebec's chief electoral officer. This prompted the action for declaratory and injunctive relief.

Justice Rouleau did what the inmate asked. He was not impressed with the administrative or security arguments made by the Attorney General of Canada. Justice Reed's opinion in <u>Gould</u> appealed to him. 25 D.L.R. 4th at 189.

7.4 Manitoba Cases in 1986

There was a provincial election called in Manitoba for March 18, 1986 and this prompted another battle. Some long-term inmates of the Stony Mountain Penitentiary tackled section 31 (d) of the Manitoba Elections Act which provided that "Persons who are in gaols, prisons or places of detention serving a sentence imposed as punishment for an offence under law" are disqualified from voting.

Justice Scollin was the first judge deciding a case on inmates' voting rights with the benefit of the Supreme Court of Canada's classic <u>Oakes</u> judgment, which was announced February 28, 1986. He published his opinion in <u>Badger v. Manitoba</u>, 30 D.L.R. 4th 108, on March 12, 1986, less than a week before the provincial election.

The champions of the Manitoba Elections Act mounted a vigorous defence, arguing, in Justice Scollin's words, that "the limitation of the right to vote may have the several legitimate objectives of preserving the currency of the franchise and both symbolically and practically stigmatizing those who deliberately breach their duty to society". 30 D.L.R. 4th at 112. Their arguments convinced the judge that the objects of the Manitoba Act were pressing and substantial. Id.

Justice Scollin did not give the legislation a passing grade though. His reasons for failing it are these:

It is simply a blanket disqualification of absolutely everyone who happens to be in any penal institution at all, serving any sentence of imprisonment for any offence, serious or minor. Thus, for example, no culpable loss of the civic capacity to vote exists and, therefore, the requisite rational connection is absent in the case of a person who has been imprisoned for the inadvertent commission of an offence of absolute liability. Again, as regards the extent of impairment of the constitutional right, a minimal infraction of a regulatory statute which is penalized by a few days imprisonment may result in the effective loss for four years or more of the right to vote.

30 D.L.R. 4th at 114.

Justice Scollin declared section 31(d) of the Manitoba Elections Act invalid. But he refused to make any orders which would allow inmates to vote. He wanted the "legislators who are about to be elected [to] ... have an opportunity to decide what, if any, limits society should place on the otherwise unfettered right of imprisoned felons to influence the shape of the society from which they have been temporarily barred." 30 D.L.R. 4th at 115. Had he done otherwise, the public interest would not have prevailed "over the belated claims to constitutional justice by those applicants who are serving jail terms of nine, five and seven years for grave breaches of the criminal law". Id.

The federal inmates appealed but the Manitoba Court of Appeal declined to help them. 32 D.L.R. 4th 310 (1986). This refusal was in part linked to the inmates waiting until the eleventh hour to seek relief. 32 D.L.R. 4th at 311.

No case report records any disputes that occurred in 1987, but 1988 was an election year in Canada and the right of an inmate to vote was again on the judicial agenda.

7.5 Ontario Cases in 1988

Grondin v. Ontario, 65 O.R. 2d 427 (H.C.J. 1988) was the first case decided in 1988. Mr. Grondin was a convicted robber about to start a five year sentence in a federal penitentiary in Ontario. He asserted that section 16 of the Ontario Election Act, 1984 was inconsistent with section 3 of the Charter and he asked the court to strike it down.

Justice Bowlby agreed with him. The judge believed that the absence of a limitation in section 3 itself was significant:

If such a limitation on such a fundamental aspect of democracy had been contemplated by those who framed our constitution, I am of the view that such a limitation could have been specifically provided for and made infinitely clear. By way of comparison, the exclusion of inmates from the franchise is specifically sanctioned by the Fourteenth Amendment to the United States Constitution.

65 O.R. 2d at 430.

This approach does not appear to take into account the presence of section 1 of the Charter. Section 1 is the provision which allows limits on Charter rights and freedoms guaranteed in other sections. Those limits are based on a wide range of values, some found in the Charter and others not. The Charter is not the sole repository of values Canadians cherish and protect. Professor Lederman, explains this proposition below:

Section 1 of the Charter in effect warns us that the accepted values and goals of a free and democratic society are not just those values declared in the Charter. The full range of values and goals of such a society is broader than the latter, so that constitutionally and legally, these other values and goals may well come into play by virtue of Section 1 of the Charter.

"Democratic Parliaments, Independent Courts and the Canadian Charter of Rights and Freedoms", 11 Queen's L.J. 1, 24 (1985).

Justice Bowlby did not support the Ontario law for two other reasons. First, he believed that giving an inmate the vote might rehabilitate the inmate: "The 'prison bars' symbolize society's contempt for the breaking of the law: the ballot, the sunrise or birth of reform, at least, in part". 65 O.R. 2d at 432. Second, the provision under review was arbitrary. He pointed out that an inmate serving a one week sentence may lose the vote while another serving a much longer sentence for a more "heinous" offence may not. Id.

Justice Van Camp's decision in <u>Sauvé v. Canada</u>, 53 D.L.R. 4th 595 (Ont. H.C.J. 1988) was the second 1988 decision to address the voting rights of inmates. The plaintiff, a first degree murderer and a resident of the Collins Bay Penitentiary, contested the validity of section 14(4)(e) of the Canada Elections Act. Mr. Sauvé hoped that the Ontario High Court would not follow Justice Taylor's <u>Jolivet</u> decision, dismissing complaints of the two Kent Penitentiary inmates unhappy with the voting ban in the Canada Elections Act.

Section 14(4)(e) of the Canada Elections Act prohibited "every person undergoing punishment as an inmate in any penal institution for the commission of any offence".

Justice Van Camp quickly concluded that section 14(4)(e) of the Canada Elections Act and section 3 of the Charter were in conflict. She observed that the "wording of s. 3 is clear and unambiguous". 53 D.L.R. 4th at 597.

In her view, the case turned on the Attorney General of Canada's ability to successfully invoke section 1 of the Charter. Justice Van Camp understood that section 1 was the mechanism through which important community interests could trump individual rights promoted by the Charter. In assessing the competing claims of the community and the individual she indicated that she would be mindful of the values which underlie a free and democratic society. This was the direction Chief Justice Dickson gave in Oakes. 53 D.L.R. 4th at 598.

Justice Van Camp accepted the expert evidence of Professor Knopff that a liberal democracy must have a decent and responsible citizenry. It is a valid state objective to pursue under section 1 of the Charter:

Such a regime requires that the citizens obey voluntarily; the practical efficacy of laws relies on the willing acquiescence of those subject to them. The state has a role in preserving itself by the symbolic exclusion of criminals from the right to vote for the lawmakers. So also, the exclusion of the criminal from the right to vote reinforces the concept of a decent responsible citizenry essential for a liberal democracy.

53 D.L.R. 4th at 600.

She rejected the plaintiff's argument that section 14(4)(e) was "too wide in its coverage" to be sustained. In her opinion, Parliament had narrowed the scope of the law in a satisfactory manner:

The statute does not discriminate on the basis of any inborn characteristics of race or sex. The right itself was not a confirmation of a long-standing preexisting right. The Charter provision itself asked for limitation. The criteria of limitation provided for by the representatives of the people were reasonable in light of the history of the right to vote, the effect of the right to vote, the practice of other free and democratic societies. Parliament has carefully considered the extent to which those convicted should be disenfranchised. It has not removed the right of citizenship. It has not removed the right from all those who have been convicted. provided that the disqualification is for all time. It has not made the return of the right dependant upon any subsequent decision. The return is automatic as soon as the person ceases to be an inmate. It has provided for the return of the vote before the sentence is completed, as soon as the inmate has shown the requisite for a gradual return to society. The disqualification is in fact upon those who have chosen to disqualify themselves. It is not the loss of any of the fundamental freedoms.

53 D.L.R. 4th at 601-02.

7.6 Manitoba Cases in 1988

If the Chief Electoral Officer of Canada had only <u>Jolivet</u> and <u>Sauvé</u> to follow, he could have ignored the prison population when discharging his duties leading up to the November 21, 1998 federal general election. But Justice Hirschfield of the Manitoba Court of Queen's Bench declared section 14(4)(e) of the Canada Elections Act void on November 8, 1988, the day after Justice Van Camp gave it her constitutional stamp of approval. The Manitoba judge directed the Chief Electoral Officer to take the necessary steps to allow inmates of penal institutions to vote in all general elections under the Act including the federal general election on November 21, 1988. He indicated that he would have reached another conclusion had the ban only applied to persons convicted of indictable offences and serving time in federal penitentiaries. 55 D.L.R. 4th at 183.

The Attorney General of Canada appealed to the Manitoba Court of Appeal. A unanimous court allowed the appeal on November 18, 1988. <u>Badger v. Canada</u>, 55 D.L.R. 4th 177 (1988). Chief

Justice Monnin preferred Justice Van Camp's reasons and was not about to embrace the consequences of Justice Hirschfield's decision:

The consequence of [Justice Hirschfield's] ruling is an absolute right to vote for all inmates even though Justice Hirschfield realized that there could be good and logical reasons to disenfranchise those in federal penitentiaries. The task of franchising or disenfranchising all or certain inmates should be left to the elected members of Parliament. In ruling the way he did, Hirschfield J. has taken a quantum leap which logic does not permit.

...

It is not a decision which should be made by one judge or by three or more appointed judges. In cases of this nature, courts must show considerable restraint. It is better to maintain the status quo until Parliament has considered, debated and resolved the issue. Should Parliament not act within a reasonable period of time, then the matter can be reviewed.

55 D.L.R. 4th at 183 & 188.

Justice Philp was equally reluctant to give every inmate the vote in a federal general election. He said that it was "in the public interest that Parliament resolve the public policy questions, and have a reasonable time to do so". 55 D.L.R. 4th at 190.

Justice Lyon was unconvinced by the inmates' claims. He held that the inmate disqualification did not infringe section 3 of the Charter (55 D.L.R. 4th at 192) and went on in this fashion:

Losses or suspension of rights which occur when a citizen is lawfully imprisoned have always been accepted in Canada as a reasonable consequence of lawful imprisonment. Again, I see nothing in the Charter which affects that result. Of all the rights which an inmate loses, the right to vote would hardly be considered as basic a right as that of association, of mobility and the general right of liberty. If imprisonment removes those basic Charter rights from inmates, how can it be argued that the words of section 3 of the Charter somehow must now be interpreted to restore to inmates a right to vote which they have never heretofore enjoyed in Canada.

• • •

It follows, therefore, that if those fundamental Charter freedoms are inherently limited and subject to suspension because of a citizen's imprisonment, the right to vote even though also expressed in unconditional terms, must similarly be so limited and subject also to suspension.

55 D.L.R. 4th at 193.

Justice Lyon was likely incorrect when he asserted that the federal limit on inmates' voting did not engage section 3 of the Charter. But one can say with the same level of certainty that his view on the comparative value of the rights inmates lose on imprisonment is compelling. Does section 7 of the Charter not contemplate that a person whose liberty is lost as a result of a process in accordance with the rules of fundamental justice will not be in a position to successfully argue that other rights lost on account of imprisonment are unconstitutional?

7.7 Federal Court of Canada Cases in 1991 and 1992

It took a long time for the appeal in <u>Sauvé v. Canada</u> to be heard. Justice Van Camp's ruling in <u>Sauvé v. Canada</u> was not dealt with by the Ontario Court of Appeal until March 25, 1992. By that time Justice Strayer of the Federal Court Trial Division had heard and adjudicated a claim by a murderer impugning the validity of the federal prohibition on inmates voting. <u>Belczowski v. Canada</u>, [1991] 3 F.C. 151 (Tr. Div.).

Justice Strayer's judgment was released on July 28, 1991. Justice Strayer made it very clear that he was going to consider the issue of inmate voting rights afresh, notwithstanding the decision of the Manitoba Court of Appeal in <u>Badger</u>. [1991] F.C. at 164.

The Federal Court judge started his analysis by referring to some of the core values Chief Justice Dickson outlined in <u>Oakes</u>. [1991] 3 F.C. at 164-65. He formed the view that "[i]t is important to note the recognition in this statement of respect for the individual as an inherent element of a free and democratic society". [1991] 3 F.C. at 165.

The Attorney General of Canada presented three objectives which he maintained the federal prohibition advanced. According to counsel, Parliament acted "a) to affirm and maintain the sanctity of the franchise in our democracy; b) to preserve the integrity of the voting process; and c) to sanction offenders." [1991] 3 F.C. at 166. Canada did not suggest "that allowing inmates to vote would create undue administrative or security problems for prison administrators". [1991] 3 F.C. at 167.

Professor Knopff of the University of Calgary was the standard bearer for the Government of Canada. It was his opinion that "constitutional democracies require a decent and responsible citizenry who respect and voluntarily abide by the laws of the state". [1991] 3 F.C. at 167. Justice Strayer did not seem to quarrel with this proposition ([1991] 3 F.C. at 168), but he did not find it helpful. He observed that

[w]hile this proposition of the defendant embodies a reasonable description of certain practical preconditions for a modern liberal democratic state, it is not self-apparently prescriptive of exclusionary measures that may or must be taken against certain classes of potential voters. On its face it does not alter the basic principle that in a democratic state it is the voters who choose the government, not the other way around.

[1991] 3 F.C. at 167.

Justice Strayer is certainly justified in observing that voters choose the government. But is he entirely correct when he suggests that the government does not choose the voters. Perhaps not. It is a statute which declares who is qualified to vote. What is more important is to recognize that safeguards should be in place to ensure that once a government is in power measures are in place to ensure that it "is not free to perpetuate its power by tampering with voting rights or constituent boundaries". International Commission of Jurists, "The Dynamic Aspects of the Rule of Law in the Modern Age", Report on the Proceedings of the South-East Asian and Pacific Conference of Jurists (1965). This principle accounts in part for the decision of the Supreme Court of Canada in favour of "effective representation" in the Saskatchewan Electoral Boundaries Reference Case, [1991] 2 S.C.R. 158.

Justice Strayer did not believe that the state could restrict the vote to decent and responsible citizens just because it was correct to say that "it is essential to a modern liberal democracy that the majority of people be 'decent and responsible' in the sense of accepting the existence of the state and the legitimacy of its legal system as well as obeying most of its positive laws". [1991] 3 F.C. at 168. He went on to find that even if this position was defensible, the Canada Elections Act did not have this purpose. [1991] 3 F.C. at 168. This conclusion appealed to him because the law was tainted by the law's failure to treat all indecent and irresponsible persons the same way:

It is arbitrary in singling out one category of presumably indecent or irresponsible citizens to deny them a right which they otherwise clearly have under section 3. It is self apparent that there are many indecent and irresponsible persons outside of prison who are entitled to vote and do vote; on rare occasions some even get elected to office. On the other hand there are many law-breakers who are never charged with offences, and a high percentage of those who are never imprisoned. Those who have been identified among the indecent and irresponsible by a sentence of imprisonment do not necessarily become decent and responsible upon release, although their voting rights automatically arise under the Canada Elections Act.

[1991] 3 F.C. at 168-69.

Justice Strayer did not have any difficulty approving a legislative test "related to maturity and mental condition". [1991] 3 F.C. at 168. In other words, the state could preclude those with internal limitations such that they were unable to decide what was best for themselves from participating in an electoral process where the members of a community collectively decide what is best for the community. It is odd that he opposed denying the vote to those whose conduct had actually harmed the community they lived in, but would sanction a rule precluding the participation of those who never had.

The Attorney General of Canada's second objective was the preservation of the integrity of the voting process. The argument takes this form: Because prison conditions do not allow inmates to participate in political life, inmates are not able to cast a meaningful ballot. However, the defendant did not call evidence to buttress this claim. Justice Strayer pointedly observed that "[t]here was

absolutely no evidence presented on this point by the defendant". [1991] 3 F.C. at 109. The plaintiff, on the other hand, "related how he was able to follow public events in prison through watching numerous public affairs programs on television and reading newspapers and magazines regularly available to inmates". [1991] 3 F.C. at 109. Justice Strayer dismissed the defendant's second argument.

Before leaving the first two objectives, it is necessary to note that Justice Strayer paid little attention to the comparative law picture Professor Knopff painted because "I have no idea what objective these countries had in mind, if any, in adopting these provisions". [1991] 3 F.C. at 170. One would have thought this evidence would have produced the opposite response. Is it not significant that inmates in the United Kingdom, New Zealand and most American states are subjected to some form of disqualification?

Justice Strayer did accept the Attorney General's last argument that it was acceptable to sanction offenders by denying them the right to vote. [1991] 3 F.C. at 171.

Justice Strayer put Canada's first two objectives through the second part of the <u>Oakes</u> test even though they failed to pass the first test. His assessment of the integrity argument is worth recording:

If one were to join this particular crusade advocated by Crown counsel, it would be necessary to disenfranchise the sick and the elderly who are confined to their homes or institutions, those in hospital prior to an election, probably those out of the country during election campaigns, the illiterate, those who live in remote parts of the country and, most of all, those hundreds of thousands who live in our midst and who according to regular polls, take no interest whatever in politics. The absurdity of this proposition throws into question the whole argument that the state has a right to choose among adult citizens of sound mind as to who is worthy to vote.

[1991] 3 F.C. at 172.

The real debate in Justice Strayer's opinion, was whether the sanction objective met the second part of the <u>Oakes</u> test.

Justice Strayer acknowledged that denying inmates the vote is a penalty. This meant that there was a rational relationship between the means and the end. [1991] 3 F.C. at 172.

The Attorney General of Canada did not persuade the judge that the law made it over the minimal impairment hurdle. Justice Strayer held that the ban "directly and completely abolishes that right for the period of imprisonment. In this it is in contrast to incidental abridgment, brought about by imprisonment, of other Charter rights and freedoms such as freedom of assembly or expression". [1991] 3 F.C. at 173. Is this convincing? Is the judge saying that the ban is a problem because it is expressly stated in the Canada Elections Act? Would it have been acceptable if the statute required voters to cast a ballot on polling day in their electoral district and said nothing about inmates being ineligible to vote. If so, the distinction the judge favoured is not appealing.

Justice Strayer had four reasons for giving the Canada Elections Act a failing grade on that part of the test evaluating the communal benefit the deprivation represented as opposed to the individual detriment inmates who lost the vote suffered. [1991] F.C. at 173. First, inmates convicted of all types of crimes were treated the same. The statute did not take into account the wrong the inmate committed. Second, the timing of an election determines whether an inmate will be deprived of a vote. Third, punishment is not as important in corrections theory as is rehabilitation. Fourth, some other countries, "such as Germany, Greece and Spain allow the sentencing court at its discretion to order a forfeiture of the vote in certain cases". [1991] 3 F.C. at 174.

The Attorney General of Canada appealed. The Federal Court of Appeal dismissed the appeal. 90 D.L.R. 4th 330 (1992). Justice Hugessen delivered the judgment of the court. The gist of his opinion appears in this passage:

Depriving inmates of the vote is not a ringing and unambiguous public declaration of principle. On the contrary it is an almost invisible infringement of the rights of a group of persons who, as long as they remain inside the walls are, to our national disgrace, almost universally unseen and unthought of. If, as I think, therefore, the alleged symbolic objective is one whose symbolism is lost on the great majority of citizens, it is impossible to characterize that objective as pressing and substantial.

90 D.L.R. 4th at 341.

In case the judge had not made his views forcefully enough in the passage just quoted, he added the following observation: "[I]t would appear to me that the true objective of s. 51(e) may be to satisfy a widely held stereotype of the inmate as a no-good almost sub-human form of life to which all rights should be indiscriminately denied". 90 D.L.R. 4th at 342.

The Federal Court of Appeal, as one would have concluded from reading the passages quoted above, did not think much of Canada's case. Justice Hugessen went so far as to say that "I have very serious doubts as to whether a wholly symbolic objective can ever be sufficiently important to justify the taking away of rights which are themselves so important and fundamental as to have been enshrined in our constitution". 90 D.L.R. at 341.

This statement contrasts sharply with the view enunciated by Justice Dickson in <u>The Queen v. Big M Drug Mart Ltd.</u>, [1985] 1 S.C.R. 295, 337:

To the extent that it binds all to a sectarian Christian ideal, the Lord's Day Act works a form of coercion inimical to the spirit of the Charter and the dignity of all non-Christians. In proclaiming the standards of the Christian faith, the Act creates a climate hostile to, and gives the appearance of discrimination against, non-Christian Canadians. It takes religious values rooted in Christian morality and, using the force of the state, translates them into a positive law binding on believers and non-believers alike. The theological content of the legislation remains as a subtle and constant

reminder to religious minorities within the country of their differences with, and alienation from, the dominant religious culture. (Emphasis added).

Justice Dickson asserted that the law does send signals to the community. Because it is the state which is sending the message it has significance in the community. The Federal Court of Appeal is at odds with the Supreme Court of Canada on this issue.

The Federal Court of Appeal, unlike Justice Strayer, did not accept any of the objectives the Attorney General of Canada argued accounted for Parliament's decision to disqualify inmates from voting. 90 D.L.R. 4th at 342. Justice Hugessen also concluded that the Canada Elections Act "fails at every stage" of the second part of the <u>Oakes</u> analysis. 90 D.L.R. 4th at 343. Indicative of his thoughts is this sentence: "The fact of being in prison is not, by any means, a sure or rational indication that the person is not a decent and responsible citizen". 90 D.L.R. 4th at 343. This is not likely a view many Canadian share.

7.8 An Ontario Court of Appeal Case in 1992

The Federal Court of Appeal's decision in <u>Belczowski</u> was announced after the Ontario Court of Appeal heard argument in the <u>Sauvé</u> case but before the Ontario Court pronounced judgment in <u>Sauvé</u> on March 25, 1992. 89 D.L.R. 4th 644.

Justice Arbour thought it noteworthy that "s. 3 of the Charter is immune from the notwithstanding clause contained in s. 33" and concluded that

the right to vote must be protected against those who have the capacity, and often the interest, to limit the franchise. Unpopular minorities may seek redress against an infringement of their rights in the courts. But like everybody else, they can only seek redress against a dismissal of their political point of view at the polls.

89 D.L.R. 4th at 649-50.

There is no doubt that Justice Arbour's opposition to limiting the franchise for political reasons is sound. But one must remember that in Canada the undeniable trend is in the opposite direction. The list of those denied the right to vote is getting shorter and not longer. Parliament in An Act to Amend the Canada Elections Act, S.C. 1993, c. 19, s. 23 repealed the disqualification federally appointed judges and incompetent persons previously faced.

The Ontario Court of Appeal evaluated the three objectives Canada alleged accounted for the contested federal law. Justice Arbour wrote that "I doubt that anyone could now be deprived of the vote on the basis, not merely symbolic but actually demonstrated, that he or she was not decent or responsible". 89 D.L.R. 4th at 650-51.

She easily disposed of the claim that inmates should not vote because they did not participate in the political process:

It is said that the conditions that prevail in penal institutions are inimical to public discussion and debate. That side effect of imprisonment does not appear to be particularly severe. The evidence indicates that the appellant had access to newspapers and television, including cable television, which provides coverage of House of Commons debates. Many voters have chosen to live in a universe figuratively not much larger than a prison cell, and many inmates may be avid and astute consumers of the mass media made available to them. Whether one takes advantage of the possible exposure to the democratic market-place of ideas is a matter of personal choice, not a prerequisite for the right to cast a ballot.

89 D.L.R. 4th at 651.

The judge is probably right on this point. If the community only recognized the value of the votes cast by informed voters some would assert that it would not take long to count the ballots.

The Ontario Court of Appeal's judgment did not discuss in detail why the federal statute failed the second segment of the <u>Oakes</u> test. Justice Arbour merely expressed substantial agreement with the opinions of Justices Strayer and Hugessen in <u>Belczowski</u>, 89 D.L.R. 4th at 652.

The Ontario Court of Appeal's judgment was ultimately appealed to the Supreme Court of Canada in Sauvé No. 1.

7.9 Federal Court Trial Division's 1995 Decision in Sauvé No. 2

Parliament acted to address the Supreme Court's decision in <u>Sauvé No. 1</u>. It sought to minimize the impairment of the right of inmates to vote with the passage of an Act to Amend the Canada Elections Act, S.C. 1993, c. 19, s. 23(2). As of May 6, 1993 section 51(e) of the Canada Elections Act denied "every person who is imprisoned in a correctional institution serving a sentence of two years or more" the vote in an election conducted under the Canada Elections Act.

Mr. Sauvé again challenged the Canada Elections Act limitations in the Federal Court. <u>Sauvé v. Canada</u>, 132 D.L.R. 4th 136 (Fed. Ct. Tr. Div. 1995) [hereinafter <u>Sauvé No. 2</u>].

This time the Government of Canada only put forward two objectives. The first was the enhancement of civic responsibility and respect for the rule of law and the second was the enhancement of the general purposes of the criminal sanction.

Justice Wetston examined the proceedings of the House of Commons and the Senate and the legislative text. 132 D.L.R. 4th at 148-51. He found that Parliament acted to promote both goals counsel identified. 132 D.L.R. 4th at 151.

Justice Wetston found the objectives to be pressing and substantial. He opined:

At this stage, attention must be focused on the democratic ideals which Canada as a free and democratic society, fosters. There may well be no unified western tradition of political theory but it is clear from the evidence in this trial that civic and moral responsibility are key components of our liberal democratic traditions. In fact, the preamble to the Charter declares that Canada is founded upon principles that recognize "the rule of law".

Section 51(e) of the CEA has a punitive aspect. There is little doubt that retribution is a concept that is not alien to criminal sanctions. Indeed, sentences are partly punitive in nature.

132 D.L.R. 4th at 152-53.

With that crucial question answered in the positive, the Court tackled the next one. Justice Wetston wrote that "the Court must determine, then, whether the evidence establishes that it is reasonable or logical to conclude that there is a material link between the disqualification and the objectives". 132 D.L.R. 4th at 154.

Justice Wetston found that "there exists a rational connection between disenfranchisement and enhancement of civic responsibility and respect for the rule of law". 132 D.L.R. 4th at 157.

Justice Wetston, unlike Justice Strayer in <u>Belczowski</u>, accepted that most laws are symbolic and carry messages to society. He wrote that section 51(e), in addition to its symbolic function, is intended to

shape a voluntary social order. It is reasonable to suggest that the provision sends a very strong message that certain forms of criminal behaviour are not acceptable in a society that is born free and democratic. I find the morally educative function of the law to be compelling. While this education may have little or no effect on the offender, it nevertheless sends a powerful message to society that good citizenship and serious crimes are inconsistent with liberal democratic principles.

132 D.L.R. 4th at 158-59.

Accordingly, s. 51(e) was rationally connected to the objective of enhancing civic responsibility and respect for the rule of law.

Justice Wetston also found a rational connection between section 51(e) and the objective of enhancing the criminal sanction.

Justice Wetston, however, found another approach which he thought was significantly less intrusive in achieving the dual government objectives. 132 D.L.R. 4th at 165. Justice Wetston opined that

granting the sentencing court the power to deprive the criminal of the right to vote was the preferable way to proceed. 132 D.L.R. 4th at 163.

He disagreed with counsel for the defendant that the rule in question does minimally impair the rights of those adversely affected by its application. Counsel urged the court to find that the "two-year cut-off will ensure that only serious offenders will be disqualified from voting". 132 D.L.R. 4th at 160. The temporary nature of the rule was also highlighted. Id. So was the fact that a person released from prison regained the right to vote. 132 D.L.R. 4th at 161. Counsel also emphasized that the rule was universal in that it potentially applied to all citizens and that it did not call on the citizen to demonstrate any attribute necessary in a voter. Id.

Justice Wetston has unequivocally concluded that a liberal and democratic state may deprive persons who are "clearly indecent and immoral" of the vote. 132 D.L.R. 4th at 163. Most Canadians would probably agree with Justice Wetston. But his next conclusion that judges are in the best position to make this assessment is not as likely to command general support. Why does he think that the Charter compels the community to make this assessment on a case-by-case basis? Is it not enough that Parliament has considered the question and identified persons serving sentences of at least two years as having sufficiently reprehensible social qualities? Why can Parliament not select a bright line test? How does the judge reconcile his willingness to favour an option Parliament did not even consider and his statement that "Parliament must have some latitude to choose alternatives"? 132 D.L.R. 4th at 163.

Determining the minimal impairment test as he did relieved the judge of the need to answer the last question. He did complete the inquiry nonetheless.

Justice Wetston questioned whether the rule "so severely trench[ed] on Charter rights that the legislative objective, albeit important, [was] outweighed by the infringement of rights"? 132 D.L.R. 4th at 165. He said that it did. 132 D.L.R. 4th at 178.

Justice Wetston noted that the inmates who testified felt isolated from the community and he opined that this might impede their reintegration into the community. This is highly subjective material and was not substantiated by any empirical evidence. 132 D.L.R. 4th at 177. On the other side of the equation was the Government of Canada's claim that the rule promotes law-abiding conduct and respect for the rule of law. There was no expert evidence given that would have assisted the judge in evaluating this claim. This should have prompted him to conclude that the rule did not have a disproportionate effect. Instead, he determined that the "pervasive lack of awareness of the proposition suggests that the disqualification is actually incapable of producing any such salutary effects". 132 D.L.R. 4th at 177-78. There was no evidence that citizens lacked knowledge of the voting rules. The judge appeared to base this factual finding on a Government of Canada publication and some sentencing texts. 132 D.L.R. 4th at 172-73. This is hardly the kind of foundation one would expect to buttress the factual determination the judge made. One should have very strong evidence before concluding that members of the community are not familiar with a law. This is particularly so when the Royal Commission on Electoral Reform and Party Financing observed that the "commission found Canadians singularly knowledgeable and helpful". 2 Royal Commission on Electoral Reform and Party Financing, Reforming Electoral Democracy xiv (1991).

The decision of Justice Wetston has been appealed to the Federal Court of Appeal. That appeal should be heard sometime in 1999. The Government of Alberta has intervened in the appeal.

7.10 Alberta Court of Appeal Decision in Byatt v. Alberta

The decision of the Court of Appeal of Alberta in <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644 (Alta. C.A. 1998) is the most recent judicial analysis of which we are aware considering the impact of section 3 of the Charter on the voting rights of inmates.

The attackers in <u>Byatt v. Alberta</u>, 47 Alta. L.R. 3d 285 (Q.B. 1997) declared Alberta's inmate voting ban unconstitutional, concluding that the Supreme Court of Canada's <u>Sauvé No. 1</u> decision compelled this result.

A panel of the Alberta Court of Appeal unanimously agreed with Justice MacKenzie that <u>Sauvé No. 1</u> was controlling. Justice Côté, with whom Chief Justice Fraser concurred, stated that he "cannot see any real distinction between the wording of the two disqualification sections, federal and provincial" (158 D.L.R. 4th at 648) and could not "distinguish the <u>Sauvé</u> case" (158 D.L.R. 4th at 649). Justice Conrad agreed that <u>Sauvé No. 1</u> "cannot be distinguished". 158 D.L.R. 4th at 664. For this reason, the Court of Appeal dismissed Alberta's appeal.

However, Justice Côté (and Chief Justice Fraser) went on to express the opinion that "not all bans on inmate voting would be unconstitutional" and to suggest that "the overbreadth of the Alberta legislation would be capable of easy amendment." 158 D.L.R. 4th at 650.

Justice Côté suggested (158 D.L.R. 4th at 654) that Alberta would be able to defend a ban on inmate voting that did not include persons who were awaiting sentences (158 D.L.R. 4th at 651) or were "serving very short sentences" (158 D.L.R. 4th at 653-54). This view is comparable to that expressed by Justice Scollin in <u>Badger v. Manitoba</u>, 30 D.L.R. 4th 108, 114 (Man. Q.B. 1986), a case dealing with the constitutionality of the inmate voting ban in section 31(d) of Manitoba's Elections Act.

Justice Côté was content to let the Legislative Assembly of Alberta decide "where to draw the line" because "[d]ebates in Court about how many hairs made a beard are rarely profitable" and a "mere quibble about a precise number, is the very place for the Courts to accord elbow room to Legislatures under s. 1". 158 D.L.R. 4th at 653. This view harmonizes nicely with Justice La Forest's willingness, expressed in Harvey v. New Brunswick, [1996] 2 S.C.R. 876, 905 & 906, to give the legislature some rope when it decides the appropriate duration of a period that a dishonest politician is ineligible to run for office.

Justice Côté disagreed with many of the opinions expressed by judges who had struck down limits on inmate voting. For this and other reasons, it is helpful to summarize here the important features of his opinion:

a. Justice Côté did not characterize the goals Alberta claimed accounted for the inmate voting ban as symbolic. 158 D.L.R. 4th at 654. He believed that a law "[m]andating

a bar on voting strongly deters, generally and specifically" (158 D.L.R. 4th at 658), as did the Supreme Court of Canada in Harvey v. New Brunswick, ([1996] 2 S.C.R. 876, 903). He said this: "Canada survives and works only because the vast majority of residents of Canada support the law and the values which it reflects. So they voluntarily obey the law. That is not symbolic. That is a stark necessity." 158 D.L.R. 4th at 654. Justice Côté also regarded symbolism as an important factor in our society: "[W]hen interpreting the Charter, it is inappropriate to denigrate social aims and objectives as merely symbolic. Still less should one thus denigrate respect for the rule of law." 158 D.L.R. 4th at 656. He believed that the Supreme Court of Canada's decision in Harvey v. New Brunswick, [1996] 2 S.C.R. 876 was consistent with his view of the law. 158 D.L.R. 4th at 658.

b. Justice Côté is convinced that Canadians share common values and realize that citizenship is a meaningful concept. His views on this subject are set out below:

Some reported cases say that they do not see the force of the allegedly symbolic nature of citizenship and in turn respect for the rule of law. They suggest that therefore the people of Alberta or Canada would not see it either. Again, I must disagree. ... Members of the Canadian public know that the law (including the Charter) protects their own lives, health, liberties, and property. They are not blasé on the subject, and rarely forget the intimate connection.

158 D.L.R. 4th at 657.

- c. Justice Côté recognized that legislators need "some elbow room" to solve their problems. 158 D.L.R. 4th at 659. Supreme Court of Canada decisions in <u>Saskatchewan Electoral Boundaries Reference</u>, [1991] 2 S.C.R. 158 and <u>Harvey v. New Brunswick</u>, [1996] 2 S.C.R. 876 lead him to this opinion.
- d. Justice Côté did not agree with the Federal Court of Appeal's statement in Belczowski v. The Queen, 90 D.L.R. 4th 330, 336 (1992) that the state was the "singular antagonist" in inmate voting litigation. 158 D.L.R. 4th at 660-61. His reasons for holding the opposite view are set forth below:

So long as there are elections, the government will always be chosen by election, whether or not inmates (or any other group) vote. That was so even in the days when only men with property could vote. It would be so, even if we let every resident over 12 vote, without exception. The government would still be as much the creature of the voters in any of those scenarios. ... The government's interests are not at stake.

Instead, the contest of competing interests is between those who can vote, and those who cannot vote but want to. Adding one new person to the voters' rolls dilutes the vote of every existing voter. ...

... [W]hen we speak of reconciling competing <u>interests</u> under s. 1 of the Charter, the competing interests here are serving inmates on one side, and all other citizens on the other. In this litigation, the Legislature and Crown speak for the latter group.

158 D.L.R. 4th at 660-61.

- e. Justice Côté, like Justice McLachlin in the <u>Saskatchewan Electoral Boundaries Reference</u>, [1991] 2 S.C.R. 158, 181, 185 & 187-88, was mindful of the need not to overlook practical problems. He put it this way: "The Charter cannot make cucumbers out of moonbeams". 158 D.L.R. 4th at 662. Where, he asked, will inmates vote? Will they vote in the constituency within which the jail is located? Or will they vote in the constituencies where they resided before they went to jail? If inmates have the right to vote, do they have the right to participate in the electoral process? Does involvement in the electoral process entitle a inmate to attend a political meeting outside prison? 158 D.L.R. 4th at 663.
- f. Justice Côté disagreed with those who dismissed the importance of taking into account laws of other free and democratic countries. His opinion is recorded below:

I cannot omit one striking fact. The great majority of other countries studied bar at least longer-term inmates from voting. That includes the most respected free and democratic countries. Indeed, many other jurisdictions have harsher restrictions which disqualify from voting more types of convicts and for longer periods. Some ban voting for life. But Alberta restores the franchise the day the inmates stop sleeping in jail at night for any reason.

158 D.L.R. 4th at 663. See also RJR-MacDonald Inc. v. Canada, [1995] 3 S.C.R. 199, 308-09 (practices of other democratic nations referred to as "of great significance"); Saskatchewan Electoral Boundaries Reference, [1991] 2 S.C.R. 158, 186 (referred with approval to the experience of other Commonwealth countries); Harvey v. New Brunswick [1996] 2 S.C.R. 876, 914 (McLachlin, J. referred to the practices of the legislative assemblies of the United Kingdom, Australia and New Zealand); Thompson Newspaper Co. v. Canada, [1998] S.C.J. No. 44, at para. 121 (helpful to review practices in most free and democratic countries).

8. Prisoner Disenfranchisement in Other Free and Democratic Nations

8.1 Introduction

In <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644, 663 (Alta. C.A. 1998) Justice Côté took into account the fact that inmates in other free and democratic countries did not have the right to vote. He said that

I cannot omit one striking fact. The great majority of other countries studied bar at least longer-term inmates from voting. That includes the most respected free and democratic countries. Indeed, many other jurisdictions have harsher restrictions which disqualify from voting more types of convicts and for longer periods. Some ban voting for life. But Alberta restores the franchise the day the inmate stops sleeping in jail at night for any reason.

Justice Scollin also favoured review of the practices in other free and democratic countries. In <u>Badger v. Manitoba</u>, 30 D.L.R. 4th 108, 113 (Q.B. 1986) he observed that "[m]any western democracies have accepted the principle of the culpable loss of civic capacity, even though no system is likely to survive an academic test or absolute internal logic or consistency".

It is important to study the experience of other free and democratic nations and have done so. The Supreme Court of Canada regularly does so. See <u>Harvey v. New Brunswick</u>, [1996] 2 S.C.R. 876, 914 and <u>Thompson Newspaper Co. v. Canada</u>, [1998] S.C.J. No. 44, at para. 121.

8.2 The United Kingdom

In the United Kingdom a person who is in a penal institution serving a sentence may not vote at an election for members of the United Kingdom and European parliaments and local councils. These rules are set out in the Representation of the Peoples Act, 1983, c. 2, s. 3 and the European Assembly Elections Act 1978, c. 10, Sch. 1, s. 2.

8.3 United States of America

In the United States of America state laws determine who is eligible to vote in state and federal elections. U.S. Const. art. 1, §2, c1.1 (qualifications for electors of the House of Representatives); U.S. Const. amend. XVII (qualifications for electors of the Senate). The Constitution of the United States of America allows a state to disenfranchise persons "for participation in rebellion or crime". U.S. Const. amend. XIV, §2. This constitutional provision allowed the United States Supreme Court in Richardson v. Ramirez, 418 U.S. 24, 55 (1974) to uphold a California law denying the vote to "convicted felons who have completed their sentences and paroles".

In <u>Richardson v. Ramirez</u>, felons who had been convicted of felonies and completed their sentences, including parole, challenged the constitutional validity of California provisions disenfranchising ex-

felons even though their terms of incarceration and parole had expired. They sought an order compelling California county election officials to register them as voters.

Justice Rehnquist characterized their claim in this fashion: "They claimed ... that application to them of the provisions of the California Constitution and the implementing statutes which disenfranchised persons convicted of an 'infamous crime' denied them the right to equal protection of the laws under the Federal Constitution." 418 U.S. at 27-28.

The ex-felons did not argue that inmates had a constitutional right to vote. They asserted that "it is essential to the process of rehabilitating the ex-felon that he be returned to his role in society as a fully participating citizen when he has completed the serving of his term". 418 U.S. at 564 (emphasis added). Justice Rehnquist did not dismiss these points but believed that the wisdom of denying the vote to ex-felons was a decision best made by the legislature. His opinion is set out below:

We would by no means discount these arguments if addressed to the legislative forum which may properly weigh and balance them against those advanced in support of California's present constitutional provisions. But it is not for us to choose one set of values over the other. If the respondents [ex-felons] are correct, and the view which they advocate is indeed the more enlightened and sensible one, presumably the people of the State of California will ultimately come around to that view. And if they do no do so, their failure is some evidence, at least, of the fact that there are two sides to the argument.

418 U.S. at 56.

The United States Supreme Court concluded that "the exclusion of felons from the vote has an affirmative sanction in §2 of the Fourteenth Amendment" and allowed the appeal. 418 U.S. at 55. The key part of the Fourteenth Amendment is set out below:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other

<u>crime</u>, the basis of representation therein shall be reduced in the proportion which the number of male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Emphasis added.

The Model Penal Code was completed by the American Law Institute in 1962 and a number of states adopted its recommendations in whole or in part when they revised their penal codes.

Section 306.3 of the Code specifically dealt with the wisdom of prisoner disenfranchisement:

Notwithstanding any other provision of law, a person who is convicted of a crime shall be disqualified (1) from voting in a primary or election if and only so long as he is committed under a sentence of imprisonment; and (2) from serving as a juror until he has satisfied his sentence.

The rule adopted by the American Law Institute was considered by The President's Commission on Law Enforcement and Administration of Justice in its Task Force Report: Corrections 89-90 (1967). There is no indication that the Commission disagreed with the Model Penal Code formulation but it did not favour the prevailing American approach at the time:

[T]here seems no justification for permanently depriving all convicted felons of the vote, as the laws in most States provide. The convicted person may have no strong personal interest in voting, but to be deprived of the right to representation in a democratic society is an important symbol. Moreover, rehabilitation might be furthered by encouraging convicted persons to participate in society by exercising the vote.

It is not clear why the Commission equated prisoner disenfranchisement with a denial of representation. The two concepts are not the same. An inmate without the franchise is not without a representative in a legislature.

Forty-six of the fifty American states currently do not allow felons to vote. Maine, Massachusetts, Utah and Vermont do not currently disenfranchise convicted felons. That number will climb to forty-seven on January 1, 1999. Utah recently passed a bill (1998 UT H.B. 190) which disenfranchises felons commencing January 1, 1999 (currently only those convicted of treason and election crimes are prohibited from voting). Massachusetts legislators have before them a bill (1997 Mass. H.B. 1105) which would prohibit persons convicted of murder, sex-related and drug offences from voting.

A majority of the states which deprive felons of the right to vote do so for the entirety of the sentence. It is only a handful of states which allow a convicted felon to vote once incarceration ends.

Thirty-four states deny the right to vote to offenders who are on probation and twenty-one ban voting while a person is on parole.

Some states only strip a felon of the vote if he or she has committed specified crimes. For example, Alaska and Georgia prohibit persons convicted of crimes of moral turpitude from voting.

A chart at the end of 8.3 surveys the voting rights of those convicted of crime.

A felon automatically regains the right to vote in most states upon completion of the sentence. In several jurisdictions, a felon must apply for a pardon. In some jurisdictions, felons are barred for life from voting.

A presidential pardon restores civil rights lost as a result of conviction, including the rights to vote, to serve on a jury, and to hold public office, and generally relieves other disabilities that attach solely by reason of the commission or conviction of the pardoned offense. There is no general federal statutory procedure whereby civil rights may be restored after conviction or a federal criminal record expunged. As noted above, the loss of civil rights generally occurs as a matter of state law and thus rights may be restored by state action as well as by a presidential pardon.

Voting Rights of Persons Convicted of a Crime

	Prisoners do NOT have the right to vote		Persons convicted of crimes do not have the right to vote even if not imprisoned	Person on probation or parole does not have the right to vote		Loss of right to vote extends beyond completion of sentence		Pardon requi to vote
	All	Some		Probation	Parole	Yes	No	
Alabama		1	1	1	1	1		Pardon
Alaska		✓ (moral turpitude)	1	1	1		1	
Arizona		✓ (felony)	1	1	1	1	1st Offenders	Pardon (secon felony) or restoration of rights
Arkansas		✓ (felony)	1	1	1		1	
California		✓ (felony)			1		1	
Colorado	1				1		1	
Connecticut		✓ (felony)	1	1	1		1	Proof of disch from sentence
Delaware		✓ (felony)	1	1	1	1		Pardon

	Prisoners do NOT have the right to vote		Persons convicted of crimes do not have the right to vote even if not imprisoned	Person on probation or parole does not have the right to vote		Loss of right to vote extends beyond completion of sentence		Pardon required to vote
	All	Some		Probation	Parole	Yes	No	
District of Columbia		✓ (felony)					1	
Florida		✓ (felony)	1	1	/	1		Pardon or restoration of rights
Georgia		✓ (moral turpitude)	1	1	1		1	
Hawaii	1						/	
Idaho	1		1	1	1		1	
Illinois	1						1	
Indiana	1						1	
Iowa		✓ (infamous crime)	1	1	1	/		Pardon or restoration of rights
Kansas		✓ (imprison- ment of one year or longer)			1		1	
Kentucky		1	1	/	1	/	First offenders	Pardon or restoration of rights
Louisiana		✓ (felony)		1	1		1	
Maine								
Maryland		✓ (theft or other infamous crime)	1	1	1	1	First offenders	Pardon (second felony)
Massachusetts								
Michigan	1						1	
Minnesota		✓ (felony)	1	1	1		1	
Mississippi		1	1	1	1	1		Restored by pardon or executive order of the governor
Missouri	1		1	1	1		1	

	Prisoners do <u>NOT</u> have the right to vote		Persons convicted of crimes do not have the right to vote even if not imprisoned	Person on probation or parole does not have the right to vote		Loss of right to vote extends beyond completion of sentence		Pardon require to vote
	All	Some		Probation	Parole	Yes	No	
Montana		✓ (felony)					1	
Nebraska		✓ (felony)	1	1	1		1	Certificate of discharge
Nevada		✓ (treason and felony)	1	/	1	1		Pardon or petitio courts to have rights restored
New Hampshire		✓ (felony)					1	
New Jersey		✓ (indictable offence)	1	1	1		1	
New Mexico		✓ (felony or infamous crime)	1	1	1	1		Certificate of Discharge or Pardon
New York		✓ (felony)			✓		1	
North Carolina		✓ (felony)	1	/	1		1	Must file Certificate of Discharge
North Dakota		✓ (felony)					1	
Ohio		✓ (felony)					1	
Oklahoma		✓ (felony)	1	1	1		1	
Oregon		✓ (felony)					1	
Pennsylvania	1						1	
Rhode Island		✓ (felony)	1	1	1		1	
South Carolina		✓ (felony or election crime)	1	1	1		1	
South Dakota	1						1	
Tennessee		✓ (infamous crime)	1	1	1	(pre 1986)	(post 1986)	Pardon (pre 1986 convictions)
Texas		✓ (felony)	1	1	/	1		Pardon 2 years after certificate o discharge or 2 years after completing probation

	Prisoners do NOT have the right to vote		Persons convicted of crimes do not have the right to vote even if not imprisoned	Person on probation or parole does not have the right to vote		Loss of right to vote extends beyond completion of sentence		Pardon required to vote
	All	Some		Probation	Parole	Yes	No	
tah		✓ (treason and election crimes only)						
ermont								
irginia		✓ (felony)	1	1	1	/		Pardon or removal of political disabilities
ashington		✓ (infamous crimes)		1	1	(pre 1984)	(post 1984)	Pardon (pre 1984)
est Virginia		✓ (treason, felony, bribery in an election)	1	1	1		1	
risconsin		✓ (treason, felony, or bribery)	1	1	1		1	
(yoming		✓ (felony)	1	1	1	/		Pardon or restoration of civil rights

8.4 Australia

Inmates in Australia face restrictions on the right to vote at both the federal and state levels.

The federal norm is set out in section 93(8)(b) the Commonwealth Electoral Act 1918. It denies the federal franchise to those persons "serving a sentence of five years or longer for an offence against the law of the Commonwealth or of a State or Territory" or who have been convicted of treason and treachery and have not been pardoned. A bill introduced in the Senate on May 14, 1998 proposed that the five year cutoff be eliminated with the effect that all serving inmates would be unable to vote in a federal election. Electoral and Referendum Amendment Bill (No. 2) 1998.

The Northern Territory (Electoral Act 1995, s. 28), Queensland (Electoral Act 1992, s. 64) and Victoria (Constitution Act 1975, s. 48) utilize the current federal standard.

The law in New South Wales, Tasmania and Western Australia is more restrictive than the federal law. In New South Wales a person cannot vote if serving a sentence of twelve months or greater for commission of a crime. Parliamentary Electorates and Election Act 1912, s. 21. The rule is almost identical in Western Australia, with one exception. A person who has been convicted of treason cannot vote. Electoral Act 1907, s. 18(c). Tasmania has the harshest rules. In Tasmania, no person "in prison under any conviction" may vote. Constitution Act 1934, s. 14(2).

South Australia allows inmates to vote. Electoral Act 1985, s. 29.

The Australian Constitutional Commission in its 1988 Final Report recommended at pages 128-29 that the Commonwealth of Australia Constitution Act be amended to provide that

the Federal and State Parliaments and the legislature of a Territory may make laws disqualifying from voting Australian citizens who have attained the age of eighteen years who:

• are undergoing imprisonment for an offence.

The Constitutional Commission recognized at page 142 that opinion was "divided" on the wisdom of denying inmates the vote. Its

recommendation would, if adopted, permit a legislature to disqualify persons who are undergoing imprisonment for a criminal offence. We are not saying that such persons should be disqualified; merely that we think that legislatures should have power to disqualify on this ground if they think fit. Such a power would have been preserved under the Constitution Alteration (Democratic Elections) Bills of 1974, 1985 and 1987.

The Honourable E. G. Whitlam, A.C., Q.C., the Prime Minister of Australia from 1972 to 1975 and the leader of the Australian Labour Party from 1966 to 1977, was a member of this committee.

8.5 New Zealand

The New Zealand Electoral Act 1993 disqualifies certain inmates from registering as electors. Section 80(1)(d) states that:

- (1) The following persons are disqualified for registration as electors:
 - (d) A person who, under
 - (i) A sentence of imprisonment for life; or

- (ii) A sentence of preventive detention; or
- (iii) A sentence of imprisonment for a term of 3 years or more, –

is being detained in a penal institution.

Section 81 requires the superintendent of a penal institution to notify the Chief Registrar of Electors as to whether or not section 80(1)(d) of the Electoral Act 1993 applies to a particular inmate. Section 81 is in this form:

- (1) Where a person who has been sentenced to a full-time custodial sentence is received into a penal institution in which that person is to serve the whole or part of the sentence, the superintendent of that penal institution shall, not later than the 7th day after the day on which the inmate is received into the penal institution, forward to the Chief Registrar of Electors a notice -
 - (a) Showing the name, previous residential address, and date of birth of that person; and
 - (b) Showing the name and address of the penal institution; and
 - (c) Indicating whether the provisions of section 80(1) of this Act apply to that person.
- (2) The Chief Registrar of Electors shall, on receiving a notice under subsection (1) of this section, forward a copy of that notice to the appropriate Registrar of Electors.

8.6 Japan

In Japan persons who have been convicted of an offence and are serving their sentence in a correctional facility are not eligible to vote in an election.

8.7 Other Jurisdictions.

The practices of other liberal democratic societies regarding the disenfranchisement of inmates was addressed in <u>Sauvé No. 2</u>. The evidence led in 1995 by the Attorney General of Canada in <u>Sauvé No. 2</u> indicated that

[i]n Denmark, Sweden, Ireland, Israel and Switzerland, for example, prisoners vote. In Australia, inmates serving sentences of five years or more are disqualified from voting in federal elections. In Greece, prisoners serving life sentences or indefinite sentences are disqualified; otherwise, the matter

is left to the discretion of the courts. In France and Spain, disqualification depends on the sentence of the court. In England and Japan, the disqualification is total. In the United States, most states disqualify inmates from the voting process. Some states disenfranchise offenders permanently, while only two states do not disqualify at all.

132 D.L.R. 4th at 152.

9. European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that the "Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". On at least three occasions the European Human Rights Commission has considered and rejected claims that inmates have a right to vote on account of Article 3.

In <u>H. v. Netherlands</u>, 33 Eur. Comm., H.R. 242 (1983) the Commission dismissed a complaint filed by a person who was sentenced to eighteen months imprisonment for draft evasion and as a result of Netherlands' Electoral Law was deprived of the right to vote for a period exceeding the duration of his sentence by three years. The Commission acknowledged that Article 3 recognizes the principle of universal suffrage but pointed out that the right to vote is not absolute and noted that "a large number of State Parties to the Convention have adopted legislation whereby the right to vote of a inmate serving a term of imprisonment of a specific duration is suspended in certain cases, even beyond the duration of the sentence" 33 Eur. Comm. at 245. See also X. v. Germany, App. No. 4984/71, at p. 28 (E.H.R.C. Oct. 5, 1972); X. v. Germany, App. No. 2728/66, at p. 38 (E.H.R.C. Oct. 6, 1967) ("it is generally recognized that certain limited groups of individuals may be disqualified from voting").

10. Material Submitted to and Considered by the Committee

10.1 Angus Reid Poll

Some judges have suggested that Canadian voters do not understand the electoral system and, in particular, have no idea of the lot of inmates in the electoral process.

Justice Côté of the Court of Appeal of Alberta, on the other hand, was emphatic in his opinion in Byatt v. Alberta, 158 D.L.R. 4th 644 (Alta. C.A. 1998) that Alberta voters are informed, mature and intelligent. This was also the view of the Royal Commission on Electoral Reform and Party Financing. This conclusion is also supported by the public opinion poll on the subject of voting by prisoners carried out by the Angus Reid Group, Inc. Appendix D. According to Angus Reid, "With a province-wide sample of 800, one can say with 95% certainty that the results are within +/-3.5 percentage points of what they would have been had the entire adult population of the province been interviewed".

Set out below are the highlights of the Angus Reid poll:

- 1. Eighty-six percent of Albertans are aware that the Canadian Charter of Rights and Freedoms guarantees the right of Canadian citizens to vote in the election of federal members of Parliament and provincial members of the Legislative Assembly.
- 2. Sixty-eight percent of Albertans were aware that there was a lawsuit related to prisoners voting in Alberta elections.
- 3. Sixty-seven percent of Albertans believe that prisoners should be denied the vote in order to promote respect for the rule of law.
- 4. Seventy-six percent of Albertans disagree with the statement that in a free and democratic society all prisoners should be allowed to vote.
- 5. Seventy-three percent of Albertans disagree with the notion that prisoners should be allowed to vote because it will promote lessons about responsible citizenship.
- 6. Approximately eighty percent of Albertans disagree that all prisoners serving a jail sentence on election day should be allowed to vote in provincial elections.
- 7. Twenty-two percent of Albertans who agree that all prisoners serving a jail sentence on election day should be allowed to vote believe that allowing prisoners to vote promotes rehabilitation.
- 8. Sixty-two percent of Albertans hold the opinion that the government's proposed changes to the Alberta Election Act are "about right".

- 9. Eighteen percent of Albertans believe that the government's proposed amendments to the Alberta Election Act allow too many prisoners to vote.
- 10. Nineteen percent of Albertans believe that the government's proposed amendments do not allow enough prisoners to vote. Roughly half of this group or approximately ten percent of Albertans believe that all prisoners should be allowed to vote.
- 11. Seventy-seven percent of Albertans agree that persons on parole should be allowed to vote.
- 12. Sixty-eight percent of Albertans agree that those serving a total of ten days or less should be allowed to vote.
- 13. Sixty-one percent of Albertans agree that those in jail for not paying a fine should be allowed to vote.
- 14. Eighty-five percent of Albertans agree that those convicted of crimes against people, like murder, manslaughter or rape, should not be allowed to vote.

10.2 Albertans' Input

Albertans were invited to submit their views to the MLA Committee on Prisoner Voting by October 13, 1998.

550 Albertans responded to the call for submissions by telephone, e-mail, letter and facsimile. The overwhelming majority of Albertans who responded opposed voting by inmates. Approximately 314 Albertans argued that prison inmates should not vote under any circumstances. Only twenty-two submissions supported the extension of the vote to all inmates and 204 were supportive of extending the franchise to inmates in only very limited circumstances. A summary of the responses is set forth in Appendix D.

10.3 Written Submissions

In addition to individual expressions of opinion, the committee received a number of written submissions from organizations and an individual which discussed in detail the reasons for allowing or not allowing inmates to vote in Alberta elections.

The written submissions received by the committee from associations and societies in Alberta included those summarized below.

The Elizabeth Fry Society of Edmonton wrote that it "is our firm view that Alberta citizens serving sentences in jail should retain the right to cast votes regarding the affairs of the province".

There appeared to be four reasons for this position. First, an inmate is still a citizen. Second, loss of freedom is a sufficient sanction for illegal conduct. Third, giving an inmate the vote serves as a positive connection between the inmates and the community. Fourth, it is arbitrary to deny some inmates the vote when other law breakers are not sent to jail.

The Alberta Civil Society Association opined in its submission that there was never an intention when the Charter was enacted that "the right to vote in section 3 be interpreted literally, with total disregard to established practices in Canada and other liberal democracies. Even if it were to be interpreted literally, the section 1 'reasonable limitations' clause easily saves the prohibition on prisoner voting."

The Alberta Civil Society Association supported a ban on voting by inmates.

The John Howard Society of Alberta supports inmates voting. Its position is set forth in the following paragraph:

There is no acceptable reason why any inmate should be denied the right to vote. Denying inmates the right to vote violates the Charter, serves no rehabilitative function and is one more form of discrimination against those who are poor and/or belong to a minority group. Contrary to popular belief, many inmates are politically well-informed. Further, conducting polls in institutions is relatively simple, inexpensive and completely non-threatening to the public. Allowing inmates to exercise their democratic right to vote encourages responsible citizenship, states symbolically that offenders are part of society and reduces the inequity caused by the chance timing of an offender's sentence.

The Kneehill County Council considered the matter at a meeting of council. They took the following formal position on the question: "Council is not in favour of voting privileges for prisoners and considers a criminal to have lost the right to vote when convicted."

The Alberta Seventh Step Society, a non-profit organization committed to preventing recidivism through the provision of programs in the community, believed that inmates "should be allowed to vote anytime during their sentence and should not be discriminated against for the length of their sentence."

The Northern Alberta Constitutional Section of the Alberta Branch of the Canadian Bar Association also provided a formal response. The section argued that "any attempt to deprive any class of citizens of ... [the] right [to vote] must respect the basic importance of the right to vote in our system of democracy." It also expressed the view that "voting will reinforce the notion that inmates are still members of and have a stake in society." The section did acknowledge that the "notion that certain criminals serving sentences for heinous and shocking crimes would be allowed to vote is one which

many would find troubling" but responded to this concern by arguing that "[t]his is a natural and understandable reaction, but we must recognize that it is rooted in an obsolete way of thinking about what imprisonment entails." The section concluded with this submission: "We urge that the government of Alberta recognize the importance of the right to vote and respect it by not enacting new provisions of the <u>Election Act</u> which would limit prisoners' rights to vote."

Mr. C. B. Davison, a lawyer, argued that the right to vote "should not be removed, limited or denied except in the most extreme of circumstances". He emphasized that the onus to justify any restriction should be on those who seek to limit the right to vote. Mr. Davison pointed out that the province constitutionally has no jurisdiction "to enact any sort of provision purely for punitive reasons". Further, Mr. Davison said that "very little is actually lost in the sense of civic virtue or respect for the democratic process by virtue of inmates being permitted to vote". In addition, Mr. Davison suggested that there are no valid security reasons to deny inmates the vote and that inmates are capable of exercising free will when casting a ballot. Finally, Mr. Davison suggested that should Alberta decide to limit the rights of inmates to vote, such ban should only be taken on a

case-by-case basis based upon convictions entered against individuals, and not necessarily based upon the form of punishment (imprisonment as opposed to custodial) imposed. In this way, some element of consistency would hopefully be achieved which is noticeably lacking in the scheme which was in place until declared unconstitutional.

Mr. Davison believed that this determination should be made by the sentencing judge or by a body independent from government and the courts, such as the Chief Electoral Officer's administration.

10.4 Expert Opinions

The committee consulted with two experts in prisoner voting in order to obtain a philosophical and policy review of the question. One of the expert consultants was Dr. Christopher Manfredi, a professor of political science at McGill University. He provided a report to the committee entitled "Liberal Democracy and Inmates' Voting Rights - A Reflection on Possible Amendments to the Alberta Election Act." Dr. Manfredi's report is Appendix E. The second expert consulted by the Committee was Dr. Rainer Knopff. Dr. Rainer Knopff is a professor of political science at the University of Calgary. His report is entitled "Prisoners and the Right to Vote" and is attached as Appendix F.

10.4.1 Professor Manfredi

Dr. Christopher Manfredi is a professor of political science at McGill University and an associate member of the Institute for Comparative Law, Faculty of Law, McGill University. He obtained his B.A. and M.A. from the University of Calgary before acquiring his Ph.D. at Claremont Graduate School.

Professor Manfredi testified as an expert witness in <u>Sauvé v. Canada</u>, 132 D.L.R. 4th 136 (Fed. Ct. Tr. Div. 1995). He gave the opinion that section 51(e) of the Canada Elections Act was consistent with democratic theory and practice.

Professor Manfredi also testified as an expert witness in <u>Byatt v. Alberta</u>, 47 Alta. L.R. 3d 285 (Q.B. 1997). He gave the opinion that section 41(d) of the Alberta Election Act was consistent with the theory and practice of a liberal democratic state committed to the rule of law.

In his report for the MLA Committee on Prisoner Voting, Professor Manfredi opined that inmate voting restrictions are consistent with liberal democratic principles and practice because:

- 1. Liberal democratic theory and practice permit the establishment of limits on the right to vote;
- 2. Liberal democratic regimes may use public law to promote norms of civic virtue and respect for the rule of law;
- 3. Restrictions on the right to vote of correctional institution inmates promote civic virtue and respect for the rule of law by educating the general population about the requirements of good citizenship;
- 4. Education in the requirements of good citizenship is an integral component of policies that preserve respect for the rule of law and promote the integrity of the democratic process;
- 5. Granting inmates the right to vote would reduce the value of the franchise, undermine the integrity of the democratic process, and encourage disrespect for the rule of law.

Professor Manfredi concluded that:

These propositions lead to the general conclusion that restrictions on the right to vote of prison inmates may legitimately be characterized as a necessary *safeguard* of the right to vote protected by section 3 of the Canadian Charter of Rights and Freedoms rather than as an interference with, or limit on, that right.

Professor Manfredi's report is tightly reasoned and contains many important points. His formulation of criteria which identify valid limits on the right to vote is particularly insightful. He argued at page 9 of his report that "liberal democracies must view the right to vote as presumptive". This means that a citizen may not be required to demonstrate the existence of any trait which the state claims a voter must have. This rules out literacy tests which some American states utilized in the past to reduce the number of blacks voting. Professor Manfredi also asserted at page 9 that any valid test "must be universal, in the sense that, in principle, every citizen could be subjected to them". This explains why age limits are appropriate but not race or gender based limits.

On page 10 of his report the professor stated three related notions. First, a liberal democracy committed to the rule of law requires a sufficient number of citizens who on a regular basis abide by the law and participate in the process which elects the law makers. Second, a citizen who is unable to meet even the least demanding norms in a community and is a law breaker makes choices about social conduct which are contrary to the wellbeing of a liberal democratic state. There comes a point when a state may have too many law breakers and not enough public spirited citizens to remain a liberal democratic state. The third notion is that taking the vote away from a citizen who makes bad choices which result in violations of society's most basic rules of behaviour encourages other citizens to make good choices - namely obey the law and vote. This promotes conduct which is not anti-social and promotes participation in the democratic process. Professor Manfredi explained it in this fashion at page 11 of his report:

The principal objective that the inmate voting restriction serves in a free and democratic society ... is to protect the integrity of liberal democracy by preserving and promoting the rule of law and the civic virtues on which a regime based on equal political liberty depends. The restriction serves this objective by suspending the right to vote of individuals who have manifestly demonstrated their disrespect for the rule of law and their lack of those virtues. It simultaneously reinforces the principle that citizenship entails responsibilities and duties as well as rights and privileges.

Hence, restricting the inmate franchise for all incarcerated inmates, except those serving the shortest of sentences, falls within the range of acceptable liberal democratic restrictions on the franchise.

10.4.2 Professor Knopff

The University of Toronto granted Rainer Knopff a Ph.D. in 1981. He is currently and has been a professor at the University of Calgary teaching political science for over twenty years.

Professor Knopff was an expert witness in <u>Sauvé v. Canada</u>, 53 D.L.R. 4th 595 (Ont. H.C.J. 1988) and <u>Belczowski v. Canada</u>, [1991] 3 F.C. 151 (Tr. Div.) and <u>Byatt v. Alberta</u>, 47 Alta. L.R. 3d 285 (Q.B. 1997).

Professor Knopff's submission to the MLA Committee on Prisoner Voting can be distilled into four points. One, a liberal democracy requires that a significant proportion of its citizens voluntarily obey the law and be public spirited. Two, the inmate disqualification rule provides educational support for the requisite public morality. Three, the inmate disqualification rule is not illegitimate just because it allows irresponsible citizens who are not in prison to vote. Four, history and contemporary legislative comparisons support the inmate disqualification rule.

The object of preserving respect for the rule of law was also the focus of Professor Knopff's report:

Liberal democracy and the Rule of Law are fragile plants, uncommon on the world political stage. They depend as much on the habits and beliefs of the heart and mind as they do on external institutional arrangements. ... The inmate disqualification clearly reflects and nurtures some of the most important foundational beliefs on which liberal democracy and the Rule of Law depend; the enfranchisement of inmates places the law at odds with those beliefs.

At 53.

10.5 Chief Electoral Officer's Submission

The Chief Electoral Officer participated in the judicial consideration of Alberta's previous restrictions on inmate voting set forth in the Alberta Election Act. In order to assist the court, the Chief Electoral Officer provided the Court of Appeal with a detailed breakdown of the processes currently used to facilitate voting under the Alberta Election Act.

The Court of Appeal found the information provided by the Chief Electoral Officer to be of assistance and recommended that the government of Alberta take the information provided by the Chief Electoral Officer into account in any review of the question of inmate voting. Byatt v. Alberta, 158 D.L.R. 4th at 662-63 (1998). In light of the foregoing, the Chief Electoral Officer was invited by the committee to provide general background information and materials respecting the mechanics of inmate voting in Alberta. See Appendix G.

The Chief Electoral Officer informed the committee that no inmates voted in the Edmonton McClung by-election held on June 17, 1998.

10.6 Correctional Services Division's Submission

The Correctional Services Division of Alberta Justice provided a submission to the committee. The Assistant Deputy Minister outlined some of the practical and logistical issues which must be addressed in any amendments to the Alberta Election Act. He pointed out that "procedures such as conducting an enumeration or having polling stations on site, disrupt routines and must be designed and carried out in a way that can ensure the safety of the public (including elections personnel), correctional staff and offenders." He also reminded the committee that "[f]ine defaulters normally qualify for an early release to the community to perform community service work in lieu of fine payments and are in custody for a matter of days only".

11. Conclusion and Justification

11.1 Conclusion

The Legislative Assembly of Alberta will be acting consistent with the decision of the Court of Appeal of Alberta if the Assembly enacts an amendment to the Alberta Election Act which

a. in a preamble proclaims that

- i. Canada is founded on principles that recognize the supremacy of the rule of law and the value of a parliamentary system of government featuring representatives freely chosen by the people in a democratic election and responsible to them and an electorate aware of the importance of participating in the electoral process.
- ii. the Legislative Assembly of Alberta wishes to promote recognition of those principles among Albertans to the fullest extent possible, and
- iii. the Legislative Assembly of Alberta believes that, with a few exceptions, denying the right to vote to those whose disrespect for the rule of law has caused them to be imprisoned at the time of an election under The Election Act, preserves the integrity of those principles and promotes their recognition among Albertans;
- b. declares ineligible to vote persons who are serving a sentence of imprisonment of more than ten days on polling day, other than a person who is imprisoned solely because he or she failed to pay a fine;
- deletes section 41(d)(ii), the provision referring to inmates of a correctional institution under the Corrections Act who have been convicted but not yet sentenced; and
- d. declares that an inmate's ordinary place of residence is deemed to be the place where the inmate was ordinarily resident before imprisonment.

11.2 Justification

11.2.1 Canadian Constitutional Standard

The Legislative Assembly of Alberta cannot deprive a citizen of the right to vote in an election of a member just because eighty percent of Albertans think this is a good idea. It can do so only if it has a clear understanding of the purpose served by the disenfranchisement decision and the purpose may be characterized as pressing and substantial. In addition, the disenfranchisement decision must

rationally promote the attainment of the objective and impair a citizen's right to vote as little as reasonably possible. Another way of approaching this criteria is to ask if there is a significantly less intrusive and equally effective measure. Finally, the defender of the legislation must be able to demonstrate that the beneficial effect of the disenfranchisement decision in the community is greater than the impact of the disenfranchisement decision on the inmates who are not allowed to vote in elections under the Alberta Election Act.

11.2.2 Legislative Purposes

Denying the vote to inmates serving sentences of imprisonment promotes two fundamental principles which characterize free and democratic nations. The first principle the inmate voting ban supports is the supremacy of the rule of law in a free and democratic nation.

What is meant by the rule of law? This concept is explained by the Supreme Court of Canada in Manitoba Language Rights Reference, [1985] 1 S.C.R. 721, 748-49:

In the present case, declaring the Acts of the Legislature of Manitoba invalid and of no force and effect would, without more, undermine the principle of the rule of law. The rule of law, a fundamental principle of our Constitution, must mean at least two things. First, that the law is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power. ...

Second, the rule of law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order. Law and order are indispensable elements of civilized life. ... According to Wade and Phillips, Constitutional and Administrative Law (9th ed. 1977) ... "... the rule of law expresses a preference for law and order within a community rather than anarchy, warfare and constant strife. In this sense, the rule of law is a philosophical view of society which in the Western tradition is linked with basic democratic nations.

The rule of law is the cornerstone of the Canadian Constitution. It is expressly acknowledged in the Constitution Act, 1982 and the Canadian Bill of Rights, S.C. 1960, c. 44 and is adopted by implication in the Constitution Act, 1867. See <u>Roncarelli v. Duplessis</u>, [1959] S.C.R. 121, 142 ("the rule of law is a fundamental postulate of our constitutional structure" per Rand, J.) The rule of law is important to Albertans and Canadians because they prefer to live in a community where members may freely pursue personal happiness without fear that others will harm them or their families. Unless almost all who reside in the community are prepared to abide by a code of conduct which respects the rights of all residents to pursue happiness, this state of happiness will be unattainable.

Professor Manfredi, of McGill University, makes this point in the following passage:

The relationship between citizenship and virtue is far more complicated for liberal democracies rooted in the modern political theory of natural equality. On the one hand, liberal theory generally prefers to rely on structural constraints rather than the moral virtue of leaders to guarantee that rulers govern for the public good. On the other hand, liberal theorists as diverse as Locke, Mill, Madison and Rawls have articulated the importance of at least some minimal level of civic virtue among citizens.

"Judicial Review and Criminal Disenfranchisement in the United States and Canada", 60 Rev. Politics 277, 295 (1998).

Professor Knopff certainly shares this view. In his paper "Prisoners and the Right to Vote", he states that

[t]he dependency of liberal democracy on a minimally moral citizen character is simply stated: without citizens of such character, liberal democracy would degenerate into a police state. A liberal democracy depends on voluntary law-abidingness on the part of most people. If obedience were wholly dependent on the fear of punishment, the coercive power of the state would have to expand to such an extent that it could no longer be considered liberal. Where law and interest do not coincide, fear of punishment and self-restraint are the two supports of law-abidingness. A liberal regime must depend more on the latter than the former.

The judicial view is in accord with that of the academics. Justice Strayer in <u>Belczowksi v. Canada</u>, [1991] 3 F.C. 151, 167 (Fed. Ct. Tr. Div.) stated that "a liberal democracy cannot be maintained where laws are not generally acceptable to most people otherwise the police measures necessary for effective law enforcement would destroy individual rights and liberties". Justice Wetston, another Federal Court Trail Division judge, stated in <u>Sauvé No. 2</u>, 132 D.L.R. 4th at 153 that "civic and moral responsibility are key components of our liberal democratic tradition". Justice Van Camp had made a similar point three years earlier in <u>Sauvé v. Canada</u>, 53 D.L.R. 4th 595, 600 (Ont. H.C.J.): "[A liberal democracy] requires that the citizens obey voluntarily; the practical efficacy of laws relies on the willing acquiescence of those subject to them".

The Alberta Court of Appeal also accepted this notion:

No society can survive merely by coercing its members. If even a significant minority of the population have no respect for the law, there are not enough constables, enough judges, or enough jails, to enforce that law. Canada survives and works only because the vast majority of residents of Canada respect the law and the values which it reflects. So they voluntarily obey the law. That is not symbolic. That is stark necessity.

Byatt v. Alberta, 158 D.L.R. 4th 644, 656 (1998).

The second principle advanced by the inmate disenfranchisement rule is the value of a parliamentary system of government featuring representatives freely chosen by the people in a democratic election and responsible to them and an electorate aware of the importance of participating in the electoral process. Justice La Forest, writing for the majority, commented on this principle in <u>Harvey v. New Brunswick</u>, [1996] 2 S.C.R. 876, 901. That case considered the constitutionality of a New Brunswick statute disqualifying a person from holding electoral office for five years following conviction for an unlawful electoral practice. He said that the "right of citizens to elect their government and the right of each individual to attempt to become a part of that government" is "the very embodiment of democracy".

The International Commission of Jurists, in its report "The Dynamic Aspects of the Rule of Law in the Modern Age 177 (1965), asserted that the "Rule of Law can only reach its highest expression and fullest realization under representative government".

Citizens of a state governed by a parliamentary system have important obligations, as well as rights, and it is desirable to increase the number of citizens who know that it is important to participate in the electoral process and understand how the discharge of their obligations affects the well-being of a democracy. This theme is emphasized by the International Commission of Jurists in "The Dynamic Aspects of the Rule of Law in the Modern Age" 178 (1965), part of which reads as follows:

To enable representative government to yield the best results, the people should not only be literate, but should have a proper understanding and appreciation of the principles of democracy, the functions of the different branches of the government and rights and duties of the citizen vis-á-vis the State. Civic education through schools and through all mass media of communication is therefore a vital factor for ensuring the existence of an informed and responsible electorate.

Are these objectives of sufficient importance to warrant overriding a citizen's right to vote, the query Chief Justice Dickson approved in <u>The Queen v. Oates</u>, [1986] 1 S.C.R. 103, 138? Promotion of the supremacy of the rule of law and recognition of the importance of the electorate participating in the democratic process may easily be characterized as "pressing and substantial in a free and democratic society".

Chief Justice Fraser and Justice Côté expressed the following opinion in <u>Byatt v. Alberta</u>, 158 D.L.R., 4th 644, 658 (Alta. C.A.):

Society always has an interest in determining activity that subverts the very electoral process which founds a free and democratic society. Maintaining and enhancing the integrity of the electoral process is always of pressing and substantial concern in any society purporting to be free and democratic... Mandating a bar on voting strongly deters, generally and specifically.

The goal of enhancing the electoral process is important because not all Albertans take the time to participate in the electoral process during a general election. In the last four elections participation has fluctuated between forty-seven and sixty percent. More eligible voters need to be encouraged to vote.

Before considering the means to achieve the objectives identified, it is important to identify certain goals which should not be pursued. The Alberta legislature should not invoke a prohibition on prisoner voting for the purpose of further punishing prisoners for violating the criminal law of Canada. Furthermore, the Legislative Assembly of Alberta should not enact legislation for the purpose of stigmatizing or showing contempt for prisoners.

If stigmatization or contempt was the reason for a ban on voting, then one would expect legislation to impose a ban which would take effect immediately upon conviction and would follow the convict for a set period of time or for life. Many free and democratic jurisdictions have favoured this approach.

11.2.3 Legislative Means

A declaration by the Legislative Assembly of Alberta that those who are serving a sentence of imprisonment, with a few exceptions, on polling day are ineligible to vote, sends an unequivocal message to the community that the rule of law is a primary principle by which Albertans live and that in a parliamentary system of government an electorate aware of the importance of participating in the electoral process is an indispensable feature.

Some (Belczkowksi v. Canada, [1991] 3 F.C. 151, 171 (Fed. Ct. Tr. Div.)) may not see the link that exists between the means (inmate disenfranchisement, with a few exceptions) and the objective (promotion of respect for the rule of law and encouragement of persons to vote). However, the link is strong. The Angus Reid poll demonstrates that more than two thirds of Albertans agree that "[i]n order to promote respect for the law prisoners should not be allowed to vote".

Charter jurisprudence acknowledges the nexus. In <u>Sauvé v. Canada</u>, 132 D.L.R. 4th 136, 157-58 (Fed. Ct. Tr. Div. 1995) Justice Wetston said this about the inmate voting ban in federal legislation:

It is reasonable to suggest that the provision sends a very strong message that certain forms of criminal behaviour are not acceptable in a society that is both free and democratic. I find the morally educative function of the law to be compelling. While this education may have little or no effect on the offender, it nevertheless sends a powerful message to society that good citizenship and serious crimes are inconsistent with liberal democratic purposes.

Justice Côté in <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644, 656 (Alta. C.A. 1998) was just as forceful in emphasizing the educative role of the law:

[W]hen interpreting the Charter, it is inappropriate to denigrate social aims and objectives as merely symbolic. Still less should one denigrate respect for the rule of law.

No society can survive merely be coercing its members. If even a significant minority of the population have no respect for the law, there are not enough constables, enough judges, or enough jails, to enforce the law. Canada survives and works only because the vast majority of residents of Canada respect the law and the values which it reflects. So they voluntarily obey the law. That is not symbolic. That is a stark necessity.

Professor Knopff explains in his paper "Prisoners and the Right to Vote" how the inmate disenfranchisement rule communicates to potential voters the need to participate in the electoral process:

A liberal democracy requires citizens who are willing to contribute to the collective good by voting even though each individual vote considered by itself contributes little to the result. Here a widespread and beneficial belief is at stake, namely, that the vote is more than a right, that it is a duty of responsible citizenship. This belief is nurtured by the law when, by disqualifying inmates, it explicitly links voting to responsible citizenship. Enfranchising inmates breaks this link, setting the law in opposition to a beneficial public opinion. It tells citizens that far from being a mark of responsible citizenship, the vote can be exercised by those who have manifestly demonstrated their irresponsibility. ... When the law places itself in opposition to a needed public belief, in other words, it should not be surprised to see the strength and urgency of that belief decline.

At 51-52.

Professor Manfredi also tackles this issue in "Judicial Review and Criminal Disenfranchisement in the United States and Canada", 60 Rev. Politics 277, 296 (1998):

The recognition that citizens must possess an "effective sense of justice", even in liberal democracies, leads to the conclusion that liberal democratic regimes must be concerned with cultivating a "civilized and knowledgable society". ... Liberal democracy, in other words, requires the development, by some means other than coercion, of a degree of civic virtue consistent with a political regime founded on self-government and the universality of citizenship.

11.2.4 Minimal Impairment

Chief Justice Fraser and Justice Côté stated in <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644, 661 (Alta. C.A. 1998) that the "competing interests here are the serving prisoners on one side, and all other citizens

on the other." If one allows inmates to vote, the impact of every other citizen's vote will be diminished.

When one considers all the legislative solutions which have been adopted by Canada, Canadian provinces and territories, the United Kingdom, the states of the United States of America, Australia and Australian states and territories, New Zealand, Japan and other jurisdictions, one cannot help but note the diversity of the legislative response. Some American states deprive persons of the right to vote for the duration of their sentence. Thirty-four states deny the vote to offenders who are on probation and twenty-one ban voting while a person is on parole. The United States Supreme Court in <u>Richardson v. Ramirez</u>, 418 U.S. 24, 55 (1974) upheld a California law denying the vote to "convicted felons who have completed their sentence and paroles".

Some jurisdictions deprive all inmates serving a sentence of imprisonment of the right to vote. This is the law in the United Kingdom, Japan, some American states and Canadian provinces and Tasmania. Some jurisdictions single out inmates by reference to the term of imprisonment (Canada, British Columbia, Kansas, Australia, Queensland, Victoria, Northern Territory, New South Wales, Western Australia and New Zealand, for example), the nature of the offence (most American states, Australia, Queensland and Northern Territory, for example) or both (Australia, Queensland and Northern Territory, for example).

Still others leave the decision to sentencing courts (Spain and Greece, for example) and some do not disenfranchise inmates (Manitoba, Newfoundland, Prince Edward Island, Quebec, Maine, Massachusetts, Vermont and South Australia, among other jurisdictions).

The suggestion of the Minister of Justice that the law should deny the vote to all inmates except those serving a sentence of imprisonment of ten days or less and those in jail solely on account of the failure to pay a fine puts Alberta on the middle part of the legislative spectrum sketched in above. It would appear that Chief Justice Fraser and Justice Côté, based on their <u>Byatt</u> opinion (158 D.L.R. 4th at 663), would not disagree.

A ten day imprisonment cutoff and a rule allowing all fine defaulters to vote is consistent with the opinion of Chief Justice Fraser and Justice Côté in <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644 (1998). The majority suggested that a law which may disenfranchise those serving jail time for a "comparatively small offence" or a "comparatively modest offence" could not be defended. 158 D.L.R. 4th at 653. Justice Côté's judgment also suggested there was another reason Alberta may wish to use a ten day cutoff:

There is another reason to exempt prison under (say) 10 days, unlike the present s. 41(d). In other words, another reason to disenfranchise those serving very short jail sentences. That is the evidence of advance or absentee polls. An astute accused valuing his right to vote (and not distracted by impending criminal charges) could take steps. Foreseeing that he was likely to be in jail on polling day, he could vote at an advance poll. Someone else given a long sentence would rarely be able to do

so, because Alberta advance polls occur the full week before the general polls: see Election Act, s.94(3). Everyone who knew that he was to be tried or sentenced before polling day could either vote at an advance poll, or adjourn his sentence until after polling day. It is not desirable to encourage people to postpone court proceedings. The only person with no chance to vote because of a short sentence would be someone arrested shortly before polling day.

So, it would be easier to justify prisoner disenfranchisement under s. 1 if it excepted those serving very short sentences. That would also remove much of the problem about those in jail in default of paying a find. The precise cut-off point (such as 10 days) would depend on the mechanics of advance polls, and would have to be up to the Legislature. That decision might profit from looking at some statistics beforehand.

158 D.L.R. 4th at 653-54.

A review of the statistics available indicates that an amendment in the form identified above would allow approximately twenty percent of inmates in Alberta correctional institutions to vote. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 51 (1998).

A decision to adopt the ten day cutoff suggested by the Alberta Court of Appeal would also meet the concern relating to advance polls. According to section 94(3) of the Alberta Election Act the "polling places for advance polling should be open from 9 a.m. to 8 p.m. on each of the Thursday, Friday and Saturday of the full week preceding polling day". Assuming that polling day was on a Saturday (it may be any day) and a person was sentenced to imprisonment on the second Friday preceding polling day, a person could vote if at large after serving eight days imprisonment, if he or she failed to vote at the advance poll on Friday morning, before being sentenced. A person with a ten day sentence will normally be released after serving two thirds of the sentence, or seven days.

If Justice Côté was troubled by the fact that an inmate serving a very short sentence might not be able to vote because he or she was unaware of the existence of advance polls, this accommodation meets that concern. Two persons sentenced on the same date for the same short term of imprisonment will not have different voting opportunities, just because one of them was uninformed and unaware of the existence of advance polls.

Similar reasoning would support an amendment which allowed fine defaulters to vote. An individual who has the resources or access to the resources of others or is able to participate in a fine option program will in most cases not be in jail on polling day and be entitled to vote. Dissimilar treatment should not be accorded to those who pay their fines and those who do not.

If the cutoff date is moved any higher, a significantly increased number of inmates would have the right to vote. If, for example, inmates sentenced to a term of imprisonment of less than thirty one days were eligible to vote, this would give the vote to forty-eight percent of sentenced admissions

to Alberta correctional institutions. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 51 (1998). Allowing half of provincial inmates to vote would make it impossible for legislators to say with a straight face that inmate disenfranchisement is intended to deliver an important message. Furthermore, these statistics must be considered in light of the fact that only twenty-eight percent of all convictions for federal offences receive prison sentences.

A ten year cutoff was recommended by the Royal Commission on Electoral Reform and Party Financing. The commission was of the view that "[w]ithout minimizing the gravity of the offences committed by a number of prisoners, allowing some prisoners to vote would not undermine public confidence in the value of the vote or threaten the interests of other citizens." 1 Royal Commission on Electoral Reform and Party Financing, Reforming Electoral Democracy 45 (1991). A ten year cutoff is not a serious statement about the importance of the vote in a free and democratic society or the significance of the voluntary obedience to the rule of law. A negligible percentage of the annual admissions to federal and provincial correctional facilities would be affected in the model suggested by the commission.

It is also important to note that the provisions of the Corrections and Conditional Release Act, S.C. 1992, c. 20 dramatically reduce the amount of time an offender is imprisoned. For example, an offender who is serving a sentence of less than two years is eligible for parole after serving one sixth of the sentence. This means that a person with a six month sentence will probably be released after serving one month in prison.

The submissions of the Elizabeth Fry Society, The John Howard Society, the Alberta Seventh Step Society, the Northern Alberta Constitutional Section of the Alberta Branch of the Canadian Bar Association, Mr. Davison and others favour inmate voting. Some of them argue that enfranchising inmates may encourage them to become more responsible citizens. This is what Justice Bowlby said in <u>Grondin v. Ontario</u>, 65 O.R. 2d 427, 432 (H.C.J. 1988): "'prison bars' symbolize society's contempt for breaking the law: the ballot, the sunrise or birth of reform, at least in part".

Even if some inmates may benefit from having the right to vote, that number must be a very small percentage of inmates. There are no studies which would support the argument that voting may help make prisoners responsible citizens.

The Chief Electorial officer informed the committee that no inmate voted in the Edmonton McClung by-election held on June 17, 1998. However, this fact should not be used as a basis for an inference that most inmates would not vote if they had the chance. Indeed, it is irrelevant whether inmates would exercise the franchise if they had it.

A decision to recommend that inmates serving sentences in excess of ten days should not be granted the vote should not be influenced in any way by the rehabilitation argument.

One model which has been proposed bestows on the sentencing court the jurisdiction to disenfranchise an offender as part of the sentence. This was the model Justice Wetston favoured in

Sauvé No. 2, 132 D.L.R. 4th at 163 and spoken of approvingly by Mr. Davison in his written submissions.

However, this model has two flaws. First, it may be used to disenfranchise only inmates like Clifford Olson, a person Justice Wetston describes as "clearly indecent and immoral" in <u>Sauvé No.</u> 2, 132 D.L.R. 4th at 163. Or will other standards be in place? Second, it is legislators and not judges who should decide which offenders are denied the vote. This is an issue which affects the entire community and needs to be resolved by elected representatives of the people.

Charter jurisprudence gives legislators "some elbow room", as Justice Côté put it in <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644, 659 (Alta. C.A. 1998). This approach reflects Chief Justice Dickson's words in <u>The Queen v. Oakes</u>, [1986] 1 S.C.R. 103, 139 that "the nature of the proportionality will vary depending on the circumstances of the case" and his statement in <u>Fraser v. Public Service Staff Relations Board</u>, [1985] 2 S.C.R. 455, 469-70 that "[t]here is in Canada a separation of powers among the branches of government - legislature, the executive and the judiciary".

The role of legislators and judges, while complementary, is fundamentally different. This is in part attributable to the different procedures each branch follows in discharging its duties. Legislators cannot discharge their duties as legislators unless they take time to maintain contact with their constituents. This means that if the resolution of an issue which confronts both a legislator and a judge involves an understanding of what the ordinary person is thinking, a politician is in a better position than a judge to make the call. Legislators are in a position to compile useful information to which judges may not have access. Professor Monohan makes this point in his book, Politics and the Constitution 53 (1987): "Only the legislature is equipped to deal with the vast array of data that is relevant to such an inquiry".

Some Charter cases present issues which most members of the community, including legislators, are familiar with, hold strong views on and are aware of the key arguments buttressing both sides of the controversy. In these situations, it is less likely that legal training will produce a more rational or more balanced decision. This is why judges are prepared to give legislators "some elbow room".

Justice Iacobucci reinforced this respectful relationship between the courts and legislatures in <u>Vriend v. Alberta</u>, [1998] 1 S.C.R. 493, 564-65 & 578:

In carrying out their duties, courts are not to second-guess legislatures and executives; they are not to make value judgments on what they regard as the proper policy choice; this is for the other branches. ...[R]espect by the Courts for the legislative and executive role is as important as ensuring that the other branches respect each others' role and the role of the courts.

[M]ost of the legislation held not to pass constitutional muster has been followed by new legislation designed to accomplish similar objectives. ... By doing this, the legislature responds to the Courts; hence the dialogue among the branches.

Chief Justice Fraser and Justice Côté gave significant guidance in <u>Byatt</u>. This kind of "dialogue" is helpful as legislators consider the constitutional options available to them.

11.2.5 Proportionality

In <u>The Queen v. Oakes</u>, [1986] 1 S.C.R. 103, 139-40 Chief Justice Dickson discussed the "proportionality" concept:

[I]t is clear that the general effect of any measure impugned under s. 1 will be the infringement of a right or freedom guaranteed by the Charter. This is the reason why resort to s.1 is necessary. The inquiry into effects must, however, go further. A wide range of rights and freedoms are guaranteed by the Charter, and an almost infinite number of factual situations may arise in respect of these. Some limits on rights and freedoms protected by the Charter will be more serious than others in terms of the nature of the right or freedom violated, the extent of the violation, and the degree to which the measures which impose the limit trench upon the integral principles of a free and democratic society. Even if an objective is of sufficient importance, and the first two elements of the proportionality test are satisfied, it is still possible that, because of the severity of the deleterious effects of a measure on an individual or groups, the measure will not be justified by the purpose it is intended to serve. The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society.

A recommendation to deprive inmates serving a sentence in excess of ten days of the right to vote must be balanced with an appreciation of the importance of the right to vote.

There are a number of considerations which diminish the adverse affects of the recommended voting ban on inmates. First, it does not deprive all inmates who serve sentences of more than ten days of the right to vote. It only affects those who are in jail on polling day. In other words, the inmate disenfranchisement recommended by the committee does not contain a lifetime ban, as is the case in some American states. Second, the disqualification ends, as Justice Côté explains in Byatt v. Alberta, 158 D.L.R. 4th 644, 663 (Alta. C.A. 1998), "the day the prisoner stops sleeping in jail at night for any reason". An inmate who is released on full parole, day parole, statutory release or a temporary absence ceases to be an inmate under the Corrections and Conditional Release Act and is entitled to vote. This is not the case in many American states. Twenty-one American states

deprive persons who are serving parts of their sentences or parole of the right to vote. Third, the exclusion of fine defaulters means that a large number of inmates will be allowed to vote. (One will remember that a court may not fine an offender convicted of an indictable offence punishable by a minimum term of imprisonment). Statistics show that in Alberta in 1996-97 thirty-five percent of the total sentenced admissions were for fine default. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 48-49 (1998). Fourth, in 1996-97 the median sentence length on admission to Alberta correctional institutions was thirty days. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 51. Statistics for the same period indicate that forty-eight percent of sentenced admissions to Alberta correctional institutions were for less than thirty-one days. Statistics Canada, Adult Correctional Services in Canada 1996-97, at 50 (1998). This means that most of these offenders will be released after serving ten days in prison. Fifth, unlike the law in many American states, the recommendation allows inmates to vote upon release without the need to secure a pardon. Sixth, eleven percent of sentenced admissions to Alberta correctional institutions in 1996-97 were for intermittent sentences. Statistics Canada Adult Correctional Services in Canada 1996-97, at 51 (1998). This segment of the inmate population will be able to vote. Elections in Alberta are not customarily held on weekends. Seventh, inmates in Alberta have not had the right to vote in any of the twenty-four provincial general elections held since 1905. Inmate voting is not part of the Canadian democratic tradition, nor is it part of the democratic tradition of the United Kingdom parliament, the mother of all parliaments.

Canada is founded on principles that recognize the supremacy of the rule of law and the value of a parliamentary system of government featuring representatives freely chosen by the people in a democratic election and responsible to them and an electorate aware of the importance of participating in the electoral process.

With a few exceptions, denying the right to those whose disrespect for the rule of law has caused them to be imprisoned at the time of an election under the Alberta Election Act preserves the integrity of those principles and promotes their recognition among Albertans.

The opinion of Chief Justice Fraser and Justice Côté in <u>Byatt v. Alberta</u>, 158 D.L.R. 4th 644, 657 (Alta. Ct. 1998) reflects the views of Albertans:

On the Prairies, indeed across Canada, citizenship in the broad sense is real and alive. It is not a topic aired only in public service advertisements and then forgotten.

Some...say that they do not see the force of the allegedly symbolic nature of citizenship and in turn respect for the law. They suggest that therefore the people of Alberta or Canada would not see it either. Again, I must disagree. ... Members of the Canadian public know that the law (including the Charter) protects their own lives, health, liberties and property. They are not blasé on the subject, and rarely forget the intimate connection.

Albertans agree that action is required to preserve the rule of law and the free and democratic system of government currently enjoyed in this province.





News release



For Release: Friday, September 25, 1998

Consultation Launched on Prisoner Voting

Edmonton – Alberta's Justice Minister Jon Havelock today announced an MLA committee to consult with Albertans and make recommendations regarding the issue of prisoner voting in Alberta.

"Amendments will be made to the prisoner voting provisions of Alberta's *Election Act* in order to comply with a recent decision of the Alberta Court of Appeal," said Havelock. "The court ruled that in limited circumstances prisoners have the right to vote, for example, those serving very short sentences. The MLA committee will make recommendations on how we'll comply with the court's decision."

Havelock has asked Barry McFarland, MLA Little Bow, to chair the three member committee. Rob Lougheed, MLA Clover Bar-Fort Saskatchewan, and Yvonne Fritz, MLA Calgary-Cross, are the other two committee members.

The committee is seeking the views of Albertans on prisoner voting in elections conducted under the authority of the Legislative Assembly of Alberta.

Submissions from Albertans can be forwarded until October 13, 1998, to:

MLA Committee on Prisoner Voting 4th Floor, Bowker Building 9833-109 Street Edmonton, Alberta, T5K 2E8 Fax: (403) 425-0307

Telephone: (403) 422-0500

E-mail: stewartt@just.gov.ab.ca

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For further information contact:

Peter Tadman Justice Communications Phone: (403) 427-8530 Minister of Justice and Attorney General Phone: (403) 427-2339





CONSULTATION ON PRISONER VOTING

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As a result of a recent decision on prisoner voting by the Alberta Court of Appeal, amendments to Alberta's *Election Act* will be made. The court ruled that in limited circumstances prisoners have the right to vote in elections conducted under the authority of the Legislative Assembly of Alberta.

Justice Minister Jon Havelock has appointed a three member MLA Committee to make recommendations on how Alberta will comply with the decision of the Court of Appeal. The committee chair is Barry McFarland, MLA Little Bow. Rob Lougheed, MLA Clover Bar-Fort Saskatchewan and Yvonne Fritz, MLA Calgary-Cross are committee members.

Your opinion on this issue is important.

You are invited to submit your views by Tuesday, October 13, 1998.

Submissions can be forwarded to:

MLA Committee on Prisoner Voting 4th Floor, Bowker Building 9833-109 Street Edmonton, Alberta T5K 2E8 Fax: (403) 425-0307

Telephone: (403) 422-0500

E-mail: stewartt@just.gov.ab.ca









October 8, 1998

Andy Michaelson Public Affairs Officer Alberta Justice Communications Branch 3rd Floor, Bowker Building 9833-109 Street Edmonton, AB T5K 2E8

VIA FAX & COURIER: 1-403-422-7363

Dear Andy,

Re: September 1998 Alberta Angus Reid Poll Results

The following is a brief summary of questions on the September 1998 Alberta Reid Poll conducted on behalf of Alberta Justice. These data were drawn from a telephone survey, fielded between September 24th to 29th, 1998, with a random and representative sample of 800 adult Albertans. These data have been weighted to reflect the actual age and gender distributions within each region of the province, according to the most recent Statistics Canada Census figures.

With a province-wide sample of 800, one can say with 95% certainty that the results are within +/- 3.5 percentage points of what they would have been had the entire adult population of the province been interviewed. When viewing results within smaller sub-sets of the sample (e.g. gender, age, income, etc.) great care must be taken in interpretation, as margins of error will vary according to the level of analysis chosen.

The highlights of our September survey are as follows:

Public Awareness of Issues Related to Prisoner Voting

Survey respondents were presented with a battery of three statements about voting rights and prisoner voting in Alberta specifically, and asked whether they believed each to be "true" or "false".

→ While an overwhelming majority of Albertans (86%) are aware of constitutionally enshrined democratic election rights in Canada, knowledge of specific facts surrounding prisoner voting are less widespread. Just over one-half (55%) of our September sample correctly recognize that prior to the last provincial General Election, there was legislation in place banning ALL prisoners from voting. Meanwhile, fewer than one-half (48%) of adult Albertans are correct in their assertion that "prisoners serving a jail sentence on Election Day have never voted in an Alberta provincial General Election".

- → Awareness of legal actions surrounding the issue of prisoner voting in Alberta is quite high (68% overall), with those over the age of 35 demonstrating a heightened attentiveness toward the topic.
- → Although a sizable proportion of the province is aware that a lawsuit related to prisoner voting has found its way to the courts over the past couple of years, specific knowledge of the outcome and repercussions of the suit are fairly limited. Fully 13% of those aware of the prisoner lawsuit are unable to provide any more details about what they have seen, heard or read. Roughly one-quarter of this group (26%) recall that "some prisoners filed a lawsuit" when probed on this matter, and 7% spontaneously report that the courts have heard the case or that new government legislation is forthcoming to deal with the issue.

Public Attitudes Surrounding the Issue of Prisoner Voting In Alberta

Respondents to our September assessment were presented with a battery of seven statements – attitudinal arguments in favour and against the notion of prisoner voting – and asked to gauge their support or opposition to each. Based upon this exercise, we see an opinion landscape in the province that is negatively disposed toward letting those serving criminal sentences participate in elections. Arguments emphasizing voting as an "inalienable and universal" human right or as a means to promote rehabilitation are not particularly compelling for most Albertans. Instead, provincial sentiment tends to view voting as a "right of citizenship" that can (and should) be nullified for those in jail for committing crimes against society.

- → Roughly two-thirds of Albertans agree with each of the "anti-prisoner voting" statements presented to them in our survey:
 - → "People convicted of crimes forfeit ALL of their rights while in jail" support from seven-in-ten (69%) Albertans, with over one-half (54%) strongly confirming this view;
 - → "A jail is not a place where democratic practices can be freely exercised" agreement from two-thirds (68% 43% Strongly, 25% Moderately);
 - → "In order to promote respect for the law, prisoners should not be allowed to vote" endorsement from 67% (51% Strongly, 16% Moderately) of the province;
 - → "Prisoners are deprived of many rights of citizenship the right to vote should be one of them" a view held by 64% of those interviewed, with nearly one-half (48%) expressing strong agreement.
- → In contrast, attitudinal statements advocating prisoner voting are not widely endorsed by the public writ-large, with support for these arguments ranging between one-quarter and one-third of the province. Opposition to statements sanctioning prisoner voting in Alberta is resounding and intense:

- → "Prisoners should be allowed to vote as part of their rehabilitation back into society" only one-third (33%) of the province offers agreement on this point, compared to 64% who dissent;
- → "Prisoners should be allowed to vote because it will promote lessons about responsible citizenship" One-quarter (26%) of those interviewed this September endorse this view, while 73% disagree;
- → "A free and democratic society should allow all prisoners to vote" a compelling argument for 24% of Albertans, while the rest of the province (76%) do not agree (57% disagree strongly).

Albertans Take Sides on the Prisoner Voting Issue

This portion of our survey asked Albertans their views on the propriety of universal suffrage that includes all prisoners, as well as gauging support for specific scenarios.

- → In principle, Albertans do not favour extending balloting rights to prisoners on a universal basis. Only one-quarter (25%) of those responding to our September survey feel that ALL prisoners serving jail sentences on Election Day should be permitted to vote. As well, support for this proposition is far from intense 12% strongly agree and 12% moderately agree. In contrast, a sizeable majority (75%) of the province maintains that universal prisoner balloting is not a policy they agree with (60% strongly disagree and 15% moderately disagree).
 - → Support for universal prisoner voting is most heavily concentrated among those under the age of 35 and those holding a University Degree, and is least favoured in Central Alberta. The proportion of Albertans upholding this view tends to increase with education.
- → Among those initially endorsing universal prisoner voting, opinion is swayed somewhat by providing comparative international context on the subject. Fully 15% of this group changed their minds about universal prisoner voting when told about restrictions in Australia, the U.K. and U.S.

In April, 1998, the Court of Appeal of Alberta struck down Alberta's ban on prisoner voting, ruling that it was unconstitutional because it denies ALL prisoners serving a sentence on Election Day the right to vote. The Court ruled that some prisoners do have a constitutional right to vote. In proposing amendments to the voting legislation, the Alberta Government has identified three exceptions to the vote ban:

- 1) Those serving a total sentence of 10 days or less;
- 2) Those serving a sentence because they are unable to pay a fine, and;
- 3) Those who have been convicted but have not yet been sentenced by the court.

With this in mind, our September survey sought to gauge public sentiment on the propriety of prisoner voting across a wide variety of "prisoner" classifications. Since our primary intention was to gather the most comprehensive understanding of Albertans' views on the subject, our investigation cast a "wide net". It included categories where voting is currently the norm (e.g. those on parole) to categories that fall well beyond the boundaries identified in the recent Court of Appeal ruling (e.g. those convicted of crimes such as murder, rape and manslaughter).

The results of this probe are:

- → Three-quarters of Albertans agree that the vote should extend to those on parole (77% overall 32% strongly, 45% moderately) and those being held in custody but have not yet gone to trial (75% agree 40% strongly, 35% moderately).
- → Over six-in-ten survey respondents also believe that elections should include prisoners serving a total sentence of 10 days or less (68% agree 36% strongly, 32% moderately) and those in jail for not paying a fine (61% agree 34% strongly, 27% moderately).
- → For the remaining categories on our list, support for prisoner voting drops below 50% of Albertans. Roughly four-in-ten provincial residents agree that those convicted of an offence but who have not yet begun serving their sentence should have balloting rights in Alberta elections (42% agree while 56% disagree) along with those serving a total sentence of less than 2 years (39% agree compared to 60% who disagree).
- → Between 70% and 85% of Albertans do not believe that prisoners falling under the following headings should be allowed to participate in provincial elections: Those convicted of property crimes (like fraud, theft and embezzlement), those serving a total sentence of 10 years or more, those convicted of crimes against children, or those convicted of serious crimes against people (like murder, manslaughter or rape).

Awareness & Reaction to the Provincial Government Proposed Amendments

- → Overall awareness of the Alberta Government's reaction to the Court of Appeal decision is very low across the province (15%), and even among this group specific knowledge of the proposed changes to the law is rare. Within the portion of our September sample who said they had personally seen, heard or read something about the government's response, almost four-in-ten (38%) can not provide any more detail about what they heard. Meanwhile, one-quarter (24%) suggest the Alberta Government "did not like the ruling" or that they plan to challenge it, while a small proportion believe the law is going to be revised (5%) or that voting will be allowed under certain circumstances (3%).
- → When prompted with a description of the Alberta Government's proposed changes to provincial election statutes, just under one-in-five (18%) respondents express the reservation that the legislation "goes too far" or allows too many prisoners to participate in elections. Virtually the same proportion of provincial residents (19%) maintain that the amendments do not "go far enough" in allowing prisoners access to provincial ballots, while a sizable majority (62%) of the province feels the proposed amendments "are about right".

A complete set of detailed data tables and summary graphs are appended to this letter.

Andy, I trust this provides you with the information you require. If you have any questions or comments about our September results or if you require any further analysis, please call me at (403) 237-0066.

Sincerely,

Marc Henry

Senior Research Manager

ANGUS REID GROUP, INC.

Cc: Tim Olafson, ARG Darrel Bricker, ARG

John Wright, ARG





AWAIEIIESS OF FIISONEL VOUNY LAWSUIL III

Alberta

- September 1998 -

lawsuit related to prisoners voting in provincial anything over the past year or two about a "Have you personally seen, read or heard elections here in Alberta?"

"What did you see, read or hear about this?

(n=552)

Prisoners filed lawsuit 26%

Gov't introducing new law due to decision

Prisoners allowed to vote

%/

12%

Lawsuit heard by courts

Sparked debate over right to vote

Yes - Aware

%89

People support prisoner role

Government against prisoner role

% Albertans

(Unsure) 13%

Source: Alberta Reid Poll, September 1998



Measuring Albertans' Knowledge of Voting Rights on Targeted Statements

"Please tell me whether you believe the following statements to be true or false."

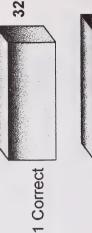
SUMMARY OF CORRECT RESPONSES

The Canadian Charter of Rights & Freedoms guarantees the right of Canadian citizens to vote in the election of federal MPs and provincial MLAs.



None Correct

%98



2 Correct



Election, there was a law in place banning ALL prisoners serving a jail sentence on Election Day During the last provincial General from voting.

General Election.

% Albertans Saying "True"



Albertans' Views on Prompted Prisoner Voting Statements

DISAGREE



Strongly

Moderately

AGREE



People convicted of crimes forfeit ALL of their rights while in jail



%69



%89







%29





64%







In order to promote respect for the law

A jail is not a place where democratic

practices can be freely exercised

28%

30%

prisoners SHOULD NOT be allowed to vote

Prisoners are deprived of many rights of citizenship - the right to vote should be

Prisoners should be allowed to vote as part of their rehabilitation back into

one of them

35%

because it will promote lessons about Prisoners should be allowed to vote esponsible citizenship

3

should allow ALL prisoners to vote A free and democratic society

Source: Alberta Reid Poll, September 1998

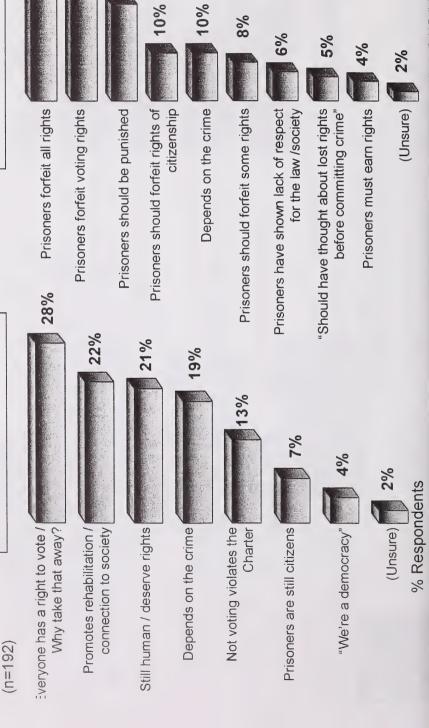


Key Top-Of-Mind Drivers of Albertans' Views on Prisoner Voting

ALL PRISONERS SHOULD BE

ALLOWED TO VOTE

ALL PRISONERS SHOULD NOT BE ALLOWED TO VOTE 31%





"Comparative Context" Argument Among

Prisoner Voting Proponents in Alberta

"Voting restrictions are placed on prisoners in Australia, the United Kingdom and the United States. With this in mind, would you say you agree or disagree that ALL prisoners serving a jail sentence on Election Day SHOULD be allowed to vote in provincial elections?"

Base: Believe All Prisoners Should Vote (n=192)



AGREE (All Should Vote)





% of Respondents



Awareness of Provincial Government's Reaction to Court of Appeals Ruling

'As you may or may not be aware, prior to the last provincial election, a law was in place banning all prisoners from voting. because it denies ALL prisoners serving a sentence on Election Day the right to vote. The Court ruled that some prisoners Appeal of Alberta ruled on this lawsuit in April of this year, saying that parts of Alberta's election laws are unconstitutional Since then, two prisoners filed a lawsuit suggesting that the Alberta election law was unconstitutional. The Court of have a constitutional right to vote."

"What did you see, hear or read about the (n=111)24% Alberta Government's reaction?" Gov't will revise law Pros/Cons of Gov't Point of View Will allow voting under certain Didn't like the ruling circumstances Plan to challenge ruling reaction to the Court of Appeal decision?" "Have you personally seen, heard or read anything about the Alberta Government's DK/NS Aware Yes -14% % of Albertans Unaware



Albertans Evaluate Provincial Government's Voting Amendment Proposals

In April of this year, the Government of Alberta announced it will be introducing amendments to the province's voting law provincial Elections with three exceptions. Prisoners will be able to vote in provincial elections if: They are serving a total sentence of 10 days or less OR they are serving a sentence because they were unable to pay a fine OR they have been n keeping with the views of the Appeal Court. Under this proposal, Alberta will continue to ban prisoner voting in convicted but not yet sentenced by the court."

"Overall, would you say this new proposal for orisoner voting in provincial elections...?"

Depends on crime Only those convicted

20%

(n=497)

"Why do you say that?"

should lose right to vote

IS ABOUT RIGHT

Seems fair

Ban shouldn't apply for fines

Everyone should be allowed to vote

Not everyone should have the right to

(Unsure)

GOES TOO FAR (i.e. lets too

(i.e. doesn't let enough

OESN'T GO FAR ENOUGH

prisoners vote

many prisoners vote))

(Unsure)

Source: Alberta Reid Poll, September 1998



Albertans Evaluate Provincial Government's Voting Amendment Proposals

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"Overall, would you say this new proposal for prisoner voting in provincial elections...?"

GOES TOO FAR (i.e. Lets too many prisoners vote

(n=148)All prisoners should lose right to

"Why do you say that?"

Once convicted they should lose right

S ABOUT RIGHT

DOESN'T GO FAR ENOUGH

(i.e. doesn't let enough

prisoners vote)

Severity of crime makes no difference Depends on severity of crime

Ban shouldn't apply for fines 🐂 3%

(Unsure) **5%**

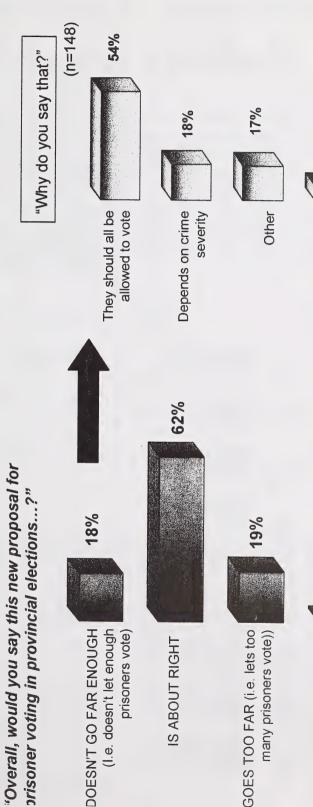
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"Overall, would you say this new proposal for orisoner voting in provincial elections...?"



Source: Alberta Reid Poll, September 1998

(Unsure)

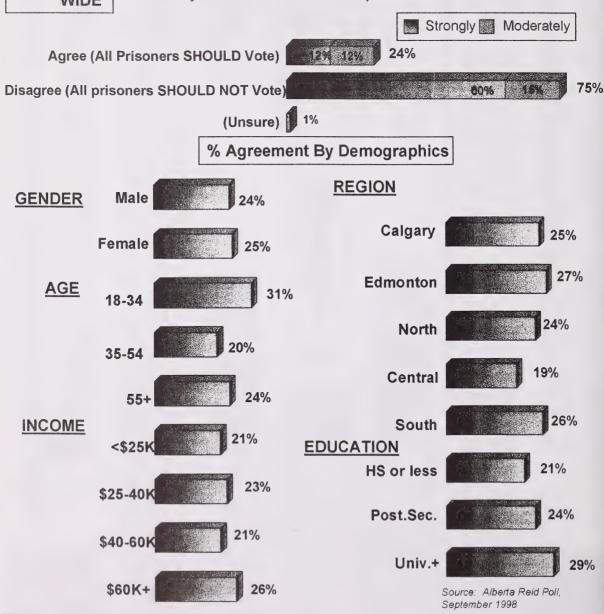
(Unsure)



Albertans' Views on Universal Suffrage Among Prisoners



"Overall, how do you feel about the issue of prisoners voting in provincial elections? Would you say you agree or disagree that ALL prisoners serving a jail sentence on Election Day SHOULD be allowed to vote in provincial elections?"





Albertans' Views on Specific Categories of **Prisoner Voting**

'Please tell me whether you personally agree or disagree that people falling into these categories SHOULD be able to vote in provincial elections?"

DISAGREE

Strongly

AGREE

Moderately

75%

Those serving a total sentence of 10 days

Those held in custody but have not yet

gone to trial

Those on parole

21%

23%

%89

Those serving a total sentence of less than 2

Those convicted of offence but who have not

et begun serving their sentence

Those in jail for not paying a fine

36%

Those convicted of property crimes like

fraud, theft and embezzlement

16%

5

%02

Those convicted of crimes against children

Those serving a total sentence of 10 years

Source: Alberta Reid Poll, September 1998

Those convicted of crimes against people like murder, manslaughter or rape



ela. Have you personally seen, read or heard anything over the past year or two about a lawsuit related to prisoners voting in provincial elections here in Alberta?

elb. What did you see, read or hear about this?

	_	Gender	ler		Age	_	À	Education	_		Inc	Income	
	Total	Male	Female	18-34	35~54	5 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	HS or Less	Post Sec.	Univ.+	< 25K	\$25K- \$40K	\$40K-	\$60K+
ela Aware of lawsuit related to prisoners voting in	s voting		ncial el	ections	here in	Alberta?	_			_			11 11 11 11 11 11
Base: All respondents Weighted	800		400 400 244 364 176 406 394 289 306 191	244	364	176	184	313	180	165	140	167	269
Yes (Aware) No (Unaware) (DK/NS)	3 68	32*	318	47.7	738	778	70%	3 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	75%	0 M 10 10 1	718 288 18	30%	32%
elb. What did you see, read or hear about	t this?												
Base: All respondents Weighted	552	274	278	140	264	137	130	209	136	110	100	118	188
Prisoners filed a lawsuit Prisoners wanting to vote/ think they	26%	29%	23%	23%	30%	4 %	28%	26\$	28%	30\$	28%	26%	31%
mave the ingue Alberta Government introducing new/ amended Election laws because of court deciation	*6	10%	80	10%	10%	υ *	* 9	TU %	14%	10%	78	\$6	10%
Prisoners were allowed to vote A debate whether they have the right to	7 %	7 %	00 OV	68	5 %	o ru % %	0 0 % %	00 VO	10%	e e	4 ru % %	88 4	10%
Lawsuit heard by Alberta Courts (Court of Anneal or Oneen's Bench)	7.8	00 %	78	ru %	80	7%	4 %	7%	10%	9	10%	38	10%
Alberta Appears Courts held parts of Alberta Election laws unconstitutional	7%	90	80	TU %	86	80	89	96	%	86	%	96	<i>₩</i>
People opposed the idea of prisoners	%	4 %	4.	*	4 %	2%	18	Ω %	84	18	2%	9	.⊣ %
voting Prisoners may be given the right to vote Preple think they should be allowed to vote	 * *	W 02	3.8	22 %	2, 4,	3.55	2 3	H W	K 4	1.8	1 9	n m	3%
Government is against it/ doesn't want to give the right	W W	(A)	2%	84	3.8	1.8	т ж	4	جي چي	3.8	₩.	2\$	₩.
Prisoners were refused the opportunity	2%	1\$	2 %	138	2%	2%		2%	ري %	2\$	- T	1%	2%
Prisoners lose their privilege when in	13.6	18	2%	*	2%	1.8	* 4	1%	-H	2%	76	2%	*
Some should vote/ some should not (unspecified)	1%	2 %	*	2%	1%	2%	# #	2%	₩ 	18	11	13%	2%
Prisoners lobying/ petitioning for the right to vote	1%	*		*	*	18	13%	1		'	23	1	1
Personal opinions	2%	2.	2%	2%	11	2%	28	18	,	1%			1%
Other	* *	70	* 0	₩ 4 %	1 0	₩ ₩ ₩ ₩	- 6	1 7	1 0	2000	1 0	1 4	-H C
(DK/NS)	12%	128	17.6	- %	128	12%	2 8	12%	6 %	14%	,	·	, r

e2. Please tell me whether you believe the following statements to be true or false.

a.) The Canadian Charter of Rights and Freedoms guarantees the right of Canadian citizens to vote in the election of federal MPs and provincial MLAS.
b.) Prisoners serving a jail sentence on Election Day HAVE NEVER voted in an Alberta provincial pertiant election.
c.) During the last provincial general election, there was a law in place banning ALL prisoners serving a jail sentence on Election Day from voting.

		Gender	10		Age	1 — I		Education	11	# H H H H	Inc	Income	n —— H H H H H H H H H H	
,	Total	Male	Female 18-34	18-34	35-54	55+	HS or Less	Post Sec.	Univ.+	< 25K	\$25K- \$40K	\$40K-	======================================	
Base: All respondents Weighted	800	400	400	244 289	364	176	184	313	313 180 314 174	165	145	167	269	
a.) The Canadian Charter of Rights and Fr	and Freedoms guarantees	uarantee		ght of C	the right of Canadian citizens	citizens	to vote		in the election		of federal MPs and	and prov	provincial MLAs.	ຫ
True False (DK/NS)	868 108 58	12.2%	87.8	80 60 80 80 80 80 80	86% 10% 5%	818 138 68	87.8 9.9 8.4 8.4	80 70 80 80 80 80 80 80 80 80 80 80 80 80 80	00 00 00 00 00 00 00 00 00 00 00 00 00	86% 13% 1%	83% 10% 7%	85% 11% 3%	11.8	
b.) Prisoners serving a jail sentence on Election Day HAVE NEVER voted in	Election	Day HAV	S NEVER	voted in	an Alberta		incial g	provincial general election	lection.					
True False (DK/NS)	488 398 138	49% 39% 12%	478 398 148	468 448 118	47% 38% 15%	3 2 2 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	3.50	48% 37% 15%	36% 51% 13%	50% 41% 9%	13 7 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	3.02	4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	
c.) During the last provincial general el	election, there was	there was	s a law in		place banning ALL prisoners serving a jail sentence on	ALL pri	soners s	erving a	jail se	ntence		ion Day f	Election Day from voting	
True False (DK/NS)	318 148	60% 29% 11%	3 00 3 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	314 154	33.3%	25.5% 19.6%	57% 27% 16%	2.56 2.74 1.74	352 364 1288	35% 10%	314 314 158	30%	32%	
SUMMARY OF CORRECT ANSWERS														
None True One True Two True Three True	3 3 3 4 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	2 4 3 4 3 4 3 4 4 4 4 4 4 4 4 4 4 4 4 4	35%	W W W W W W W W W W W W W W W W W W W	333 33 33 33 34 34 34 34 34 34 34 34 34	2 3 9 % % % % % % % % % % % % % % % % % %	25% 37% 33%		23 33 S	3.08	23.78	3 3 4 %	8 4 4 4 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	

			Gender		Age			Education	***************************************	# # # # # # #	Inc	Income	11 12 14 15 15 15 16
	Total	Total Male	Female	18-34	35-54	55+	HS or Less	Post Sec.	Univ.+	25K	\$25K- \$40K	\$40K-	\$60K+
Base: All respondents Weighted	800	400	400 394	244	364	176	184	313	180	165	140	167	269
a.) Prisoners should be allowed to v	to vote because	it will p	romote]	essons		 ponsible	 citizenship?	 Ship?					
Strongly agree Moderately agree	10%	13%	198	15%	98	78	10%	10%	11 17 %	10%	13%		11%
Moderately disagree Strongly disagree	228			26%	. % %	20%	2000	23%	213	20%	21.2	25.4	21%
(DK/NS)	11			* **	1,50	* on	318	18	4. V '-1 % %	28	18		51%
Top2box (Agree)	26\$	268	27%	32\$	22\$	23%	25%	26%	29%	278	25%	20%	27%
LOWIDOX (Disagree)	73\$	73%	73%	67%	77%	778	75\$	73%	10%	718	748	808	72%
b.) Prisoners are deprived of many rights of		citizenship	- the right	ght to vote	ote should	d be one	e of them?	- L			-		
Strongly agree	48%	52%	45%	448	52\$	50%	53%	50%	448	488	50%	498	49%
Moderately agree	46 46 71 P	12%	19%	10%	12%	178	16%	16%	17%	15%	14%	15%	14%
Strongly disagree	22\$	25%	20%	24%	248	18%	21%	18%	12%	14%	12%	13%	12%
(DK/NS)	18	1.0%	- T	1%	-H	1.8	,	1 %	*	340	2 %	3	1 (
Top2box (Agree)	64%	64%	64%	63%	64%	67%	869	\$99	809	63%	64%	63%	62%
Lowzbox (Disagree)	35%	35.	35%	36%	35%	32%	31%	33%	39%	378	348	36%	37\$
c.) Prisoners should be allowed to v	to vote as part of		rehabili	their rehabilitation back	ack into	 society?	٠						
Strongly agree	13%		12%	80	118	313	, ,	128	2 %	2	o	C	7
Moderately agree	20%		25%	24%	178	20%	38	21%	23%	218	308	17%	27.8
Moderately disagree	178	16%	18%	18%	178	16%	148	18%	22%	16%	18%	- 10	9 60
Strongly disagree	478	52%	438	39%	53%	51%	53%	48%	40%	478	22 %	1 10	4 4
(DK/NS)	2%	2%	18	2%	28	2%	1%	2%	1%	2%	1.8	2%	
Top2box (Agree)	34%	30%	378	428	28%	31%	32%	32%	29	3.7.8	30%		3,4
Low2box (Disagree)	\$59	819	62%	578	10%	819	819	299	63%	638	9 69	\$69	63%

e3. I'm going to read you some statements about the issue of prisoner voting, and I'd like you to tell me if you personally agree or disagree with each?

ts place where democratic		Male ===== 400 400 406 524% 24% 24% 25% 25% 25% 25% 25% 25% 25% 25% 25% 25	emale 1394 400 268 268 118 118 158 308	18-34 289 289 3629 388 298 178 178	35-54 == 364 == 306 == 306 == 306	55+	HS or Less	Post Sec.	11 - 11 - 11 - 11 - 11 - 11 - 11 - 11	25K	\$25K-	S40K-	N N H H N N
democratic		400 406 s can b 247 128 158	* ' ' '		364 306 sed?		10 11 11 11 11	11 H	Univ.+	/ i	1	\$60K	\$60K+
democratic		24 % % % % % % % % % % % % % % % % % % %			sed?	176	184	313	180	165	140	167	269
strongly agree hoderately agree throngly disagree trongly disagree (DK/NS) (Op2box (Agree)		24 7 % 1 1 2 8 % 1 5 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	11 14 6 % % % % % % % % % % % % % % % % % %	1 1 1 5 3 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4									
oderately agree Moderately disagree Strongly disagree DK/NS) Op2box (Agree)		24\$ 12\$ 15\$ 2\$	115% 115% 15% 10%	15%	47%	44%	448	9,77		6	7 2 6	7	7
oderately disagree trongly disagree DK/NS) op2box (Agree)		12%	14% 15% 5% 30%	15%	23%	24%	22%	26%	28%	27%	2.2%	27.8	4 1 % 2 7 %
trongly disagree (DK/NS) (DS/NS) (DS/DS) (DS/DS) (DS/DS) (DS/DS/DS/DS/DS/DS/DS/DS/DS/DS/DS/DS/DS/D		15%	15% %% %% %% %% %% %% %% %% %% %% %% %% %	178	148	11%	15%	17%			10%	14%	178
op2box (Agree)		27	30\$		14%	15%	16%	11%	19%		198	118	15%
op2box (Agree)			30\$		7%	40	w %	EU %			-M	2%	₩
		71%	30%	68%	70%	889	99	70%		67%	70%	728	873
Low2box (Disagree)		28%		32%	28%	25%	31%	28%	33.0	30%	29%	25%	20 6
e., in order to promote respect for the raw		prisoners snourd	na noc pe	oe allowed	ed to vote?	Le v							
Strongly agree	51%	53%	464	438	55%	578	58%	50%				54%	48%
Moderately agree	16%	14%	18%	20%	15%	13%	148	16%	22\$			18%	17%
Moderately disagree	15%	* 6	17%	178	12%	16%	16%	14%				12%	13%
(DK/NS)	16% 2%	18%	14%	18%	16%	33		18%	20%	19%	13%	13%	20%
			1	9	9	4	9	2		2.7		2.6	8
Top2box (Agree)	819	819	819	638	70%	70%	72%	899	62%	819	72%	72%	65%
Low2box (Disagree)	31%	31%	32\$	35%	28%	29%	278	33%			28\$	25%	33%
f.) A free and democratic society should allow ALL	low ALL	prisoners	rs to vote?	te?									
Strongly agree	12%	13%	10%	178	11%	78	94	12%			ď	ď	7.
Moderately agree	12%	10%	13%	148	90	13%	- % - %	13%	11%	111%	10%	118	10%
Moderately disagree	19%	178	218	21%	18%	178	21\$	198			15%	20%	19%
Strongly disagree	578	59%	548	48%	62%	62%	62%	26%	52%	55%	61%	62%	55.%
(DK/NS)	1.8	7%	1.8	*	1%	1%	*	18			1%	1	1%
Top2box (Agree)	23%	23%	24%	31%	19%	20%	178	25%			24%	, B	24%
Low2box (Disagree)	76%	76%	75%	869	808	79%	37.8	74%	72%	3 2 2	70.0	2010	

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	- 1	Gender	ler		Gender Age Education Income		Щ	Education	-		Inc	Income	H H H H H H H
	Total	Male	Male Female 18-34 35-54	18-34	Total Male Female 18-34 35-54 55+ Less Sec. Univ.+ < 25K \$40K \$60K \$60K+	55+	HS or Less	Post Sec.	\$25K- Univ.+ < 25K \$40K	< 25K	\$25K-	\$40K- \$60K	\$60K+
Base: All respondents Weighted	800	400	394	244	364	176	184	313	180	165	140	167	269
g.) People convicted of crimes forf	forfeit ALL of their rights while in Jail?	ir right	s while	in jail?									
Strongly agree	54\$	52\$	55.5	478	\$65	54 %	58\$	52%		51\$	93	59%	51.8
Moderately agree	15\$	168	15%	17\$	148	15%	16%	18%		18%	13%	14%	16%
Moderately disagree	15\$	16%	148	18%	118	18\$	13%	15%	178	13%	10%	16%	158
Strongly disagree	15\$	16%	148	178	158	118	13%	13%		16%	148	11%	18%
(DK/NS)	18	36	2.8	*	1.8	2%	*	18		1\$,	17%	'
Top2box (Agree)	\$69	\$89	70%	65%	73\$	\$69	74%	718		70\$	778	73%	
Low2box (Disagree)	30%	318	288	35%	26%	288	26%	28%	40%	29%	23%	26%	33%

e3. I'm going to read you some statements about the issue of prisoner voting, and I'd like you to tell me if you personally agree or disagree with each?

SUMMARY TABLE

	Tonico	Gender	der		Age		ω	Education			Inc	Income	
	Total Male Female 18-34 35-54	Male	Female 18-34	18-34	35-54	! #	HS or Post 55+ Less Sec.	Post Sec.	55+ Less Sec. Univ. < 25K \$40K \$	25 K	\$25K- \$40K	\$40K-	\$ 60K+
Base: All respondents Weighted	8008	400	394	244	364	176	184	313	180	165	140	167	269
TOP2BOX SUMMARY (AGREE) a.) Prisoners should be allowed to vote because it will promote lessons about reeponsible citizenship	26%	26%	27%	32%	22%	23.8	25%	26%	20 %	27%	25%	20%	27%
 b.) Prisoners are deprived of many rights of citizenship - the right to vote should be one of them 	64%	64%	64%	63%	64%	849	69%	\$99	% 09	63	64%	63%	62%
c.) Prisoners should be allowed to vote as part of their rehabilitation back into society	34%	30%	378	42\$	28%	31\$	32%	32%	36%	35%	30%	29%	36%
 d.) A jail is not a place where democratic practices can be freely exercised 	68%	718	899	68%	70%	68%	899	70%	999	849	10\$	72%	67%
e.) In order to promote respect for the law prisoners should not be allowed to vote	819	\$19	819	63%	10%	70%	72%	999	62%	67%	72%	72%	65%
f.) A free and democratic society should allow ALL prisoners to vote	23\$	23%	248	31%	19%	20%	178	25%	27%	22%	248	18%	24%
g.) People convicted of crimes forfeit ALL of their rights while in jail	\$69	68%	70%	65%	73%	% 69	74%	71\$	59%	708	778	73%	819

me if you personally agree or disagree with each?

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TOPT		
SOUTHERE		

	Gender	Gender	ler	1	Age		ш	Education	_		Inc	Income	
	Total Male Female 18-34 35-54 55+	Male	Female 18-34	18-34	35-54	55+	HS or Post 55+ Less Sec. U	Post Sec.	Univ.+	HS or Post	\$25K-	\$40K-	\$60K+
Base: All respondents Weighted	800	400	394	244	364	176	184	313	180	165	140	167	269
LOW2BOX SUMMARY (DISAGREE)													
a.) Prisoners should be allowed to vote because it will promote lessons about responsible citizenship	73%	73%	73%	67%	77%	778	75%	738	70%	718	74%	808	72%
b.) Prisoners are deprived of many rights of citizenship - the right to vote should be one of them	35%	35%	35%	36%	35%	32%	31%	33%	39%	378	34%	36%	37%
c.) Prisoners should be allowed to vote as part of their rehabilitation back into society	65%	84.9	62%	57%	70%	819	819	999	63%	63	869	\$69	63%
d.) A jail is not a place where democratic practices can be freely exercised	29\$	28\$	30%	32\$	288	25%	31%	28%	33%	30%	29%	25%	32%
e.) In order to promote respect for the law prisoners should not be allowed to vote	31\$	31\$	32\$	35%	28%	298	27%	33%	36%	32\$	28%	25%	33%
f.) A free and democratic society should allow ALL prisoners to vote	1 76%	76%	75%	\$69	808	198	83%	748	72\$	16%	75%	82%	74%
g.) People convicted of crimes forfeit ALL of their rights while in jail	30%	31\$	28\$	35%	26%	28\$	26%	28%	40%	29%	23%	26%	33%

eda. Overall, how do you feel about the issue of prisoners voting in provincial elections? Would you say you agree or disagree that ALL prisoners serving a jail sentence on Election Day SHOULD be allowed to vote in provincial elections?

	00110	render		Age		ш	Education	_		Inc	псоше	
	65 65 67 67 68 68	HS or Post \$25K- \$40K-	81 11 11 11 11 11		H	HS or	Post	8 — 8 8 8	11	\$25K-	\$40K-	H H H
Total	Male	Total Male Female 18-34 35-54 55+ Less Sec. Univ. + < 25K \$40K \$60K \$60K+	18-34	35-54	55+	Less	Sec.	Univ.+ < 25K	< 25K	\$40K	\$60K	\$60K+
								81 81 81 81 81 81 88 88	14 14 15 18 18 18 18 18	11 11 11 11 11 11 11	11 11 11 11 11 11 11) () () () ()
800	400	400	244	364	176	184	313	180	165	140	167	269
800	406	394	289	306	191	188	314	174	167	145	163	264
12\$	14%		17%	10%	80	12%	10%	178	10%	12%	90	15
12\$	10%		14%	10%	16%	86	13%	12%	11%	11%	12%	11%
15%	13\$	178	18%	14%	118	15%	14%	178	178	13%	16%	13
809	62\$		51\$	65%	65%	63%	62%	54%	61%	63%	63%	09
18	18		*	1%	•	,	*	*	18	18	1	*
25%	248	25%	318	20%	24%	218	248	29%	21%	23%	218	26%
75%	75%		*69	808	168	70%	192	718	200	766	100	

Base: All respondents Weighted

Strongly agree Moderately agree Moderately disagree

Strongly disagree (DK/NS)

Top2box (Agree) Low2box (Disagree)

		Gender	ler		Age	_	i i	Education			Inc	Income	0 0 0 0 0 0 0 0 0 0
	Total	Male	Female	18-34	35-54	55+	HS or Less	Post Sec.	Univ.+	< 25K	\$25K- \$40K	\$40K- \$60K	\$60K+
Base: Prisoners should be allowed to	192	94	98	16	7.1	42	36	72	52	36	30	35	89
Weighted	198	66	66	06	61	45	40	74	20	36	33	34	69
Everyone should have the vote/ why take	28\$	31%	26%	40\$	19%	178	33%	248	24%	14%	33%	29%	25\$
A needed connection to the outside world/ rehab	22\$	19%	24\$	178	22\$	30%	25%	23%	26%	33%	16%	15%	26%
They are still human/ deserve some	21\$	20%	23\$	26%	198	18%	19%	27%	22%	26%	16\$	26%	248
They are still citizens/ live in this society	19%	20%	18%	26%	178	7.8	17%	23\$	19%	23\$	178	18\$	21%
Depends on the crime		118	15%	10\$	13%	198	118	10%	10%	78		118	
Not having the vote violates the Charter of Rights.	70	90 30	υ *	78	12%	1	3%	Ω ₩	13%		9	12%	\$ 6
We are a democracy	4.8	2%	78	**	99	2%	9/0	4	o-	4	38	- L	
If their sentence is nearly finished	2.8	36	100	3.8	,	2%	3%	,) IM	200
Should be punished for breaking the law	2.8	-H	2\$	3%	2%	•	1	38	2%		'	3%	
Once you are a prisoner you forfeit all	2\$	2%	14	36	•	1	30	1		'	'	30	2%
They must earn it/ prove themselves/ be	1.8	1	1%	'	'	₩	1	1	,	'	,	'	1
Should have thought about it before/ had	1%	# #	1	1.8	1	,	3.	,	1	'	1	,	2%
their chance By their poor judgement/ their actions/	18	1	1%	1*	,	,	'	ı	28	'	'	'	'
for responsible	1.8	,	1 %	•	'	2.8	'	1.8	,	'	(L)	'	<u>'</u>
Should forfeit their right to vote/	18	1	70	1.8	1	1	'		2%	'	'	3%	'
What would be the point? / not	*	مر	1	,	1	2 %	,	1	2		,	. '	,
participating in society They lack respect for the law/ society/	*	36	1	1	1.8	,	'	1	,	'	2%	,	
Other (DK/Ns)	78	90 0	nu c	23	15%	90 1	8	14%	4 %		\$6		80
(DK) NG)	2.8	<u>پې</u>	2%	w)	,	, , ,	•	مبر ا	1	•	70	36	,

Base: Prisoners should not be allowed to 603 vote Weighted Once you are a prisoner you forfeit all 597 should forfeit their right to vote/Should forfeit their right to vote/Should be punished for breaking the law 20% should lose some participation rights in 10%	Total 603 314 244 204	Male Female 303 300 304 293 31\$ 32\$	Female	18-34	35-54	55+	HS or	Post	H —	# # # # # # # # #	21		11 11 11 11 11 11
0 =	603 597 318 24% 20%	303				- 1 4 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Less	Sec.	Univ.+	< 25K	\$25K-	\$40K-	\$60K+
	31\$ 31\$ 24\$ 20\$	314	300	167	291	134	148	240	127	128	109	132	200
Once you are a prisoner you forfeit all rights/ freedoms Should forfeit their right to vote/ privilege to vote Should be punished for breaking the law should lose some participation rights in arrier.	31% 24% 10%	31%	293	198	243	146	148	239	123	131	111	129	194
Should forfeit their right to vote/ privilege to vote Should be punished for breaking the law Should lose some participation rights in	24%	23\$	32%	29\$	34%	318	26%	33%	24%	24%	368	31\$	30%
privilege to vote Should be punished for breaking the law Should lose some participation rights in	20%		26%	24\$	25%	24%	22\$	25%	328	30%	24%	20%	27\$
	10%	22\$	178	16\$	23%	21%	218	22%	18%	13			
		10%	%	96	10%	10%	10%	& %	12%	9	148	14%	89
Depends on the crime	10%	ex-	128	1 34	or or	eh ca	118	,	7	1.16			
Should forfeit some other rights	30	0 00	1 %	2 60	2 %	0 00	***	10%	9 7	138			
They lack respect for the law/ society/	89	5.8	9	78	40	7 %	, W	- 40	- AC	0 %	6 %	, w	, v
their victims Should have thought about it before/ had	3°	ص جو	 %	ru %	%	ru %	86	ιυ %	₩ H	4,			
their chance They must earn it/ prove themselves/ he	*		3	, ,	9	ć							
rehabilitated	P	e r	3r No	\$7	D 94	* 7	4, %	* 4	4°	w) ₩	4,	w %	₩.
Give up your citizenship rights when you commit a crime	4°	4°	ال جو	₩ %	€.	τυ %	70	%	4.8	\$€	۳. ش	4 %	%
Prisoners have it good	3%	3.8	3%	2%	9/0	2%	**	2%	34	28			
What would be the point? / not	2%	2.8	2%	3%	7%	1 7	2%	- Ac	- 40 1 H	1 W	200	20.1	n &
participating in society By their poor judgement/ their actions/ not responsible	2.8	1.8	3%	₩	22 %	27	22	18	4 %	2%	2.8		22
They don't care about voting/ do they	18	1.8	2\$	- H	13%	2%	3%	1%	1%	,	W.	1.8	*
If their sentence is nearly finished	*	*	*	34	-								
They are still human/ deserve some	*	'	*	1	'	1%		. ⊢l	9 1		, ,		P 1
	_	_										1	
Everyone should have the vote/ why take it away?	*	,	*	*	1	1	% H	₩ H	'	e/e	1	,	1 %
A needed connection to the outside	*	*	1	1	*	,	t	,	ı	1	1%	'	1
Other (DK/NS)	2 22	36 36	1 %	2 %	4 C	% % % %	N 0	n u	4 C	40 %	4 m	ω η. % %	50 -

e4c. Voting restrictions are placed on prisoners in Australia, the United Kingdom and the United States.
With this in mind, would you say you agree or disagree that ALL prisoners serving a jail sentence on
Election Day SHOULD be allowed to vote in provincial elections?

	Gender Age Education Income	Gender	ler	1	Age		ы	Education	_		In	Gender Age Education Income	
	Total Male Female 18-34 35-54 55+ Less Sec. Univ.+ < 25K \$40K \$60K \$60K+	Male	Female 18-34	18-34	35-54	55+	HS or Less	Post Sec.	Univ.+	Univ.+ < 25K	\$25K- \$40K	\$40K-	\$60K+
Base: Prisoners should be allowed to	192	94	86	9/	7.1	42	36	72	52	36	30	35	68
Weighted	198	66	66	90	61	45	40	74	20	36	33	34	69
Strongly agree	448	52\$	36%	48\$	438	39%	428	45%			38%	 	51%
erately agree	39%	32%	-	36%	42\$	438	348	448	36%	418		50%	36%
erately disagree	96	86	_	10%	78	10%	13%	80	12%	12%	12%	118	00
Strongly disagree	9	9	9	50 %	8 %	99	7%	2%	99	48	TU.	*	r.
/NS)	1%	28		1.8	,	36	4	1	•	•			
Top2box (Agree)	84%	848	83%	848	85%	818	16%	868					878
2box (Disagree)	15%	148	16%	15%	15%	15%	20%	118	18%	168	178	178	138

e5. Please tell me whether you personally agree or disagree that people falling into these categories SHOULD be able to vote in provincial elections?

		H H H H H H H		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		- 1						2000	
	Total	Male	Female	18-34	35-54	22 +	HS or Less	Post Sec.	Univ.+	< 25K	\$25K- \$40K	\$40K- \$60K	\$60K+
Base: All respondents Weighted	800	400	400	244	364	176	184	313	180	165	140	167	269
a.) Those convicted of an offence but wh	who have not	l t yet begun		serving their	r sentence?	3e?							
Strongly agree	20%	22\$		22\$	178	20%	18%	18%	23%	18%			
Moderately agree Moderately disagree	228	23%		22%	20%	25.4	24%	23%	19%	20%			
Strongly disagree (DK/NS)	378	368	378	36%	39%	34 %	36%	9 %	3 6 6	38.	40%	34%	378
Top2box (Agree) Low2box (Disagree)	42% 56%	45%	388	44% 54%	378	46%	42%	418	438 558	38%	46%	37%	
b.) Those serving a total sentence of 10 days or less?	0 days or	less?											
Strong!v	30.8	308	346	426	9,00	0,000		0		0			
Moderately agree	32%	28%	36%	32%	28%	38%	31%	33%	33%	33.8%	37%		
Moderately disagree Strongly disagree	13%	12%	14%	10%	16%	13%	13%	14%	11%	14%			
(DK/NS)	11	1.8	- H	\$CT	1 %	* *	\$77	1 %	1%1	14%		22%	15%
Top2box (Agree)	89	678	108	75\$	62%	70%	65%	71\$	89	71\$	70%	63%	71\$
LOWZDOX (Disagree)	318	328	29%	25%	37%	30%	35%	20 %	31%	28%			
c.) Those serving a total sentence of le	less than 2	years?											
Strongly agree	19\$	21\$	178	23\$	178	16%	12%	218	21\$	23%	16%		
Moderately agree	20%	178	23%	19%	18%	24%	21%	20%	178	16%			
Strongly disagree	42.8	45%	3000	37%	46%	44%	4 6 4 8 6 8 6 8 6 8 6 8 6 8 6 8 6 8 6 8	388	418	35%		498	39%
N NO	\$ 7	*	** **	* H	 	m)	₩	₩ ₩		23			
Top2box (Agree) Low2box (Disagree)	39%	38%	39%	428	35%	40%	33%	40%	38%	40%	40%	32%	4 1 1 %
	-			;	,)			1			_	_

		Gender	er i		Age			Education		11 11 14 15 15	Inc	Income	E	
	Total	Male	Female	Female 18-34	35-54	55+	HS or Less	Post Sec.	st C. Univ.+	< 25K	\$25K- \$40K	\$40K-	\$60K+	
Base: All respondents Weighted	800	400	400	244	364	176	184	313	180	165	140	167	269	
d.) Those convicted of crimes against p	people like	murder,	mansla	 manslaughter and	d rape?									
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	70077	2 V V V V V V V V V V V V V V V V V V V	8 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	7 7 0 0 0	* 0 0 0 4	60 4 W U L	4 N 4 0 *	800 4 4 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	100000000000000000000000000000000000000	88 44 L 08 *******	% % % % % % % % %		118	
Top2box (Agree) Low2box (Disagree)	14% 85%	16%	12%	16%	14%	12%	\$06	148	218	12%	15%	11.8	168	
e.) Those convicted of property crimes like	like fraud	, theft,	and emb	embezzlement?	11.2									
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	11 11 12 12 13 14 14 14 14 14 14 14 14 14 14 14 14 14	# # # # # # # # # # # # # # # # # # #	10 11 0 4 4 4 4 8 4 4 8 4 4 8 4 4 8 4 4 8 4 4 8 4 4 8 4 4 8 4 4 8 4	11 12 22 42 42 42 42 42 42 42 42 42 42 42 42	112 1148 1178 1178 1188	11 11 11 11 11 11 11 11 11 11 11 11 11	168 218 578 *	14 % % C C C C C C C C C C C C C C C C C	11 15 % % % % % % % % % % % % % % % % %	11 14 14 15 15 15 15 15 15 15 15 15 15 15 15 15	10% 20% 16% 53%	0 11 0 12 13 2 13 13 14 15 15 15 15 15 15 15 15 15 15 15 15 15	17% 13% 18% 50%	
Top2box (Agree) Low2box (Disagree)	28%	30%	278	318	73%	28%	22\$	28\$	31%	28%	30%	228	30\$	
f.) Those convicted of crimes against children?	hildren?													
Strongly agree Moderately agree Strongly disagree Strongly disagree (DK/NS)	7 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	9 0 4 0 T		118 68 768	18 % % % % % % % % % % % % % % % % % % %	7 80 4 11 H	% % % % % % % % % % % % % % % % % % %	10%	13% 10% 7% 69%	7 7 8 8 8 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	8% 10% 5% 77%	4 C 0 8 1	7 2 2 3 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	
Top2box (Agree) Low2box (Disagree)	16%	178	15% 85%	188	14% 85%	15% 84%	10%	178	23\$	13%	198	118	178	

e5. Please tell me whether you personally agree or disagree that people falling into these categories SHOULD be able to vote in provincial elections?

### Property of the control of the c	_			1 1 1 1					
total sentence of 10 years or more? 104	35-54	!	HS or Less	Post Sec. U	Univ.+	< 25K	\$25K- \$40K	======================================	\$60K+
total sentence of 10 years or more? 104 128 88 128 98 128 98 128 128 128 128 128 128 128 128 138 138 138 138 138 138 138 138 138 13	364	176	184	313	180	165	140	167	269
10% 12% 12% 13% 12% 9% 12% 9% 12% 13% 11% 13% 11% 13% 11% 13% 11% 13% 11% 13% 11% 13% 11% 13% 11% 13% 13									
10\$ 10\$ 11\$ 12\$ 9\$ 67\$ 67\$ 67\$ 63\$ 11\$ 20\$ 21\$ 18\$ 24\$ 11\$ 20\$ 21\$ 18\$ 24\$ 18\$ 32\$ 36\$ 29\$ 40\$ 31\$ 45\$ 43\$ 47\$ 47\$ 47\$ 12\$ 12\$ 12\$ 13\$ 75\$ 13\$ 78\$ 79\$ 76\$ 86\$ 75\$ 21\$ 20\$ 22\$ 14\$ 24\$ 75\$ 33\$ 30\$ 75\$ 20\$ 15\$ 15\$ 21\$ 75\$ 20\$ 21\$ 20\$ 22\$ 18\$ 26\$ 75\$ 20\$ 21\$ 20\$ 22\$ 18\$ 26\$ 75\$ 20\$ 21\$ 20\$ 22\$ 18\$ 26\$ 75\$ 20\$ 22\$ 18\$ 26\$ 26\$ 75\$ 20\$ 22\$ 18\$ 26\$ 26\$ 75\$ 20\$ 22\$ 18\$ 26\$ 75\$ 20\$ 22\$ 18\$ 26\$ 75\$ 20\$ 22\$ 18\$ 26\$ 75\$ 20\$ 22\$ 18\$ 26\$ 75\$ 20\$ 22\$ 18\$ 26\$ 75\$ 20\$ 22\$ 18\$ 26\$ 75\$ 20\$ 22\$ 18\$ 26\$		%	اب م	10%	17 %	90			
The following a fine?		11%	10%	90	11%	96	10%		. 60
20% 21% 18% 18% 18% 18% 18% 24% 18% 24% 24% 24% 43% 47% 47% 44% 44% 45% 43% 47% 47% 44% 44% 12% 12% 13% 7% 13% 12% 12% 13% 7% 13% 24% 24% 24% 24% 24% 24% 24% 24% 24% 24		13%	15%	14 %	00 W 01 00	15%		11%	
20% 21% 18% 24% 18% 32% 36% 29% 40% 31% 45% 40% 40% 31% 47% 40% 31% 40% 31% 40% 12% 12% 12% 13% 7% 13% 12% 12% 12% 13% 7% 13% 12% 12% 12% 13% 7% 13% 13% 13% 13% 13% 13% 13% 13% 13% 13		*	,	1.8	<i>₩</i>	2 %			7.0
23\$ 36\$ 29\$ 40\$ 31\$ 44\$ 47\$ 47\$ 44\$ 44\$ 47\$ 12\$ 12\$ 13\$ 7\$ 13\$ 13\$ 12\$ 7\$ 13\$ 13\$ 13\$ 13\$ 13\$ 13\$ 13\$ 13\$ 13\$ 13		178	15%	19%	27%	178	16%	19%	23%
328 368 298 408 318 408 118 128 128 108 108 108 108 108 108 108 108 108 10									
ng a fine? 128 128 138 78 108 108 108 108 108 108 108 108 108 10		26%	27%	35.6	378	33%	318		
ng a fine? 128 128 138 78 138 788 798 768 868 758 218 208 228 148 248 228 238 238 308 278 258 298 288 268 178 228 188 218 178 208 158 218		11%	11%	10%	- * - LO	27.	0 00		
ng a fine? 218		19%	13%	% %	13%	17%	12%	10%	12\$
ng a fine? 34 364 334 384 384 284 284 284 284 28			75%	79%	81%	75%	080		
ng a fine? 34% 36% 33% 39% 30% 27% 25% 29% 28% 26% 19% 17% 29% 15% 21% 17% 20% 15% 15% 21%		29%	24%	19%	18%	25%	20%	22\$	19%
34\$ 36\$ 33\$ 39\$ 30\$ 27\$ 25\$ 29\$ 28\$ 26\$ 19\$ 17\$ 22\$ 18\$ 21\$ 21\$ 17\$ 20\$ 15\$ 15\$ 21\$									
27\$ 25\$ 29\$ 28\$ 26\$ 19\$ 17\$ 22\$ 18\$ 21\$ 17\$ 20\$ 15\$ 15\$ 21\$		35%	31%	35\$	33%	38%			
178 208 158 158 218		27%	26%	29%	24%	27%			
917 907 907		% % FT F	24%	21%	20%	19%			
28 28 4 28		10.4	18		0 7 % %	10%	13%	77.7	184
618 618 668 568		62%	57%	- 829	7.0%	7.5	, c		
37% 37% 36% 33% 42%		34%	428	30.0	40%	348	36.8	45%	36%

	Gender Age Education Income	Gender	ler	11 11 11 11 12 12 12 13	Age	11 11 11 11 11 11 11 11 11 11 11 11 11		Education			Inc	Income	
	Total Male Female 18-34 55+ Less Sec. Univ.+ < 25K \$40K \$60K+	Male	Male Female 18-34 35-54	18-34	35-54	55+	HS or Less	Post Sec.	Univ.+ < 25K	< 25K	\$25K- \$40K	\$40K- \$60K	\$60K+
Base: All respondents Weighted	800	400	394	244	364	176	184	313	180	165	140	167	269
j.) Those who are being held in custody but have not yet gone to trial?	stody but have	not yet	gone to	trial?									
Strongly agree	40\$	43%	378	398	42\$	418	35%	398		39%		38	46%
oderately agree	35%	33%	378	368	33%	308	36%	378	35%	33%	39%		31%
oderately disagree	13\$	11%	15%	13%	12\$	13%	14%	13%		15%			
trongly disagree	10%	118	*6	\$ 80 \$	118	12%	148	98		11%			
DK/NS)	2%	2%	€ 100	*	34	4 %	18	28		38			
Top2box (Agree)	75\$	168	74%	79%	75\$	71\$	718	16%		718			77\$
ow2box (Disagree)	23\$	22%	24%	218	23%	25%	28\$	22\$	16%	26\$	22\$	20.00	20%

e5. Please tell me whether you personally agree or disagree that people falling into these categories SHOULD be able to vote in provincial elections?

SUMMARY TABLE

		Gender	er	_	Gender Age	_	М	Education			Inc	Income	
	Total	Male	Female	Female 18-34	Total Male Female 18-34 35-54 55+ Less Sec.	55+	HS or Less	Post Sec.		Univ.+ < 25K \$40K \$60K	\$25K- \$40K	Univ.+ < 25K \$40K \$60K \$60K+	\$60K+
Base: All respondents Weighted	800	400	400	244	364	176	184	313	180	165	140	167	269
TOP2BOX (AGREE)													
a.) Those convicted of an offence but who have not yet begun serving their sentence	42%	45%	38%	44%	378	46%	428	418	43%	38\$	46%	37%	41%
b.) Those serving a total sentence of 10 days or less	889	67%	70%	75%	62%	70%	65%	71%	889	71%	70%	63%	718
c.) Those serving a total sentence of less than 2 years	39%	38%	398	42\$	35%	40%	33%	% 0 4	38%	408	40\$	32\$	418
 d.) Those convicted of crimes against people like murder, manslaughter and rape 	14%	16%	12%	16%	148	12%	80	14%	218	12%	15%	1134	16%
e.) Those convicted of property crimes like fraud, theft, and embezzlement	28%	30%	27\$	31%	26%	28%	22%	28%	31%	28%	308	22\$	30\$
f.) Those convicted of crimes against children	16%	17%	15%	18%	14%	15\$	10%	178	23%	13%	19%	118	17%
g.) Those serving a total sentence of 10 years or more	20\$	21%	18%	24%	18%	178	15%	19%	27%	178	16%	19%	23%
h.) Those on parole	78%	198	168	86%	75%	869	75%	79%	818	75%	808		81%
Those in jail for not paying a fine	61%	618	61%	\$99	268	628	578	638	56%	65%	63%	53%	638
 Those who are being held in custody but have not yet gone to trial 	75%	768	74%	79%	75%	71%	718	16%	82%	71%	778		77\$

e5. Please tell me whether you personally agree or disagree that people falling into these categories SHOULD be able to vote in provincial elections?

SUMMARY TABLE

	Gender	Gender	er		Age		-	Education	_		Income	Income	_
	Total Male Female 18-34 35-54	Male	Female 18-34	18-34	35-54	55+		Post Sec.	HS or Post \$25K- \$40K- Less Sec. Univ.+ < 25K \$40K \$60K	< 25K	\$25K- \$40K	\$40K-	\$60K+
Base: All respondents Weighted	800	400	394	244	364	176	184	313	180	165	140	167	269
LOW2BOX (DISAGREE)													
 a.) Those convicted of an offence but who have not yet begun serving their sentence 	56%	52%	365	54%	62%	4 88	578	568	55%	62%	54%	26%	58 %
b.) Those serving a total sentence of 10 days or less	31%	32\$	29%	25%	378	30%	35%	28%	318	28%	30%	36%	28\$
c.) Those serving a total sentence of less than 2 years	£09	61%	58%	578	64%	578	%99	58	61%	59%	59%	849	58
 d.) Those convicted of crimes against people like murder, manslaughter and 	85%	83%	878	83%	8 6 %	888	806	85.8	78%	878	85%	868	83%
rape e.) Those convicted of property crimes like fraud, theft, and emberglement	10\$	869	72%	68	73%	70%	778	718	899	718	70\$	778	% 69
f.) Those convicted of crimes against children	83%	82%	85.8	818	85.8	84%	868	83%	16%	86%	81%	868	82\$
g.) Those serving a total sentence of 10 years or more	79%	78%	818	75\$	82%	81%	8 5 %	808	73%	818	848	808	76%
h.) Those on parole	218	20%	22%	14%	248	29%	24%	198	18%	25%	20%		19%
i.) Those in jail for not paying a fine	378	378	368	338	42%	348	42\$	35%	408	348	368	45%	36
 Those who are being held in custody but have not yet gone to trie! 	23%	22\$	24%	21\$	23%	25%	28%	22%	16%	26%	22%		20%

are unconstitutional because it denies ALL prisoners serving a sentence on Election Day the right to vote. The court ruled that some prisoners have a constitutional right to vote. Have you personally seen, heard or read anything about the Alberta Government's reaction to the Court of Appeals decision? As you may or may not be aware, prior to the last provincial election a law was in place banning all prisoners from voting. Since then, two prisoners filed a lawsuit suggesting that the Alberta election law was unconstitutional. The Alberta Court of Appeal ruled on this lawsuit in April of this year, saying that parts of Alberta's election law e7a.

e7b. What did you see, hear or read about the Alberta Government's reaction?

	_	Gender			Age	_	Ш	Education	_		Inc	Income	_
	Total	Male	Female	18-34	Total Male Female 18-34 55+ Less Sec. Univ. + < 25K \$40K \$60K	55 = = = = = = = = = = = = = = = = = =	HS or Post	Post Sec.	Univ.+ < 25K	< 25K	\$25K-	\$40K-	\$60K+
Base: All respondents Weighted	800	400	400	244	364	176	184	313	180	165	140	167	269
e7a. Have you personally seen, heard or	heard or read anything about the Alberta Government's reaction to the Court of Appeals decision?	hing abc	ut the A	lberta G	overnment	's reac	tion to	the Cour	t of App	eals dec	ision?		
Yes	14%	18%		\$6		16%	12\$	12%	20%	13%		13%	16\$
No (DK/NS)	82%	81%	868	89%	848	82%	88%	878	778	878	Φ.	85%	83%
low (vo	47	\$1		* 7		\$ 7	1	ж г-1	₩ ₩	1	,	2%	2
7b. What did you see, hear or read about the Alberta	the Albe		Government's	reaction?	nn?								
Base: Aware of Government's reaction to	111	74	37	23	28	26	21	37	38	20	17	22	44
Weighted	109	74	35	26	48	30	22	37	34	21	18	21	41
They did not like the ruling	248	25\$	20\$	99	26%	32%	12%	22%	33	20%	16*	2.5%	26%
ney're going to challenge the decision	24\$	33%	4 %	20%	30%	20%	13%	18%	36%	28%	18%	19%	42%
It will be allowed/ they will go on with it		T.C.	* 9	\$6	3%	89	%	3%	3%	ı	4.8	%	1
Under limited circumstances they are allowed to vote	W %	-H	99	44	2%	4,	η.	ب پ	9	1	١	75	23
Pro's and con's of governments point of view	2 %	-H	ي چه	1	**	,	,	rU %	'	4	1	,	2%
Get feedback from citizens/ referendum	2\$		2%	4%	1.8	,	'	,	2%	1	,	ı	4.8
Nothing	18	1%			2%	'	nu %	,	1	,		,	•
Other	78		2\$	12%	86	1	89	10%	70	13%	15%	30	50
DK/NS)	38%		_		318	404	9 11 12	45%	226	77.8		4 1 0.	0

The Angus Reid Group, Inc.

e8a. In April of this year, the Government of Alberta announced it will be introducing amendments to the province's voting law in keeping with the views of the Appeals Court. Under this proposal, Alberta will continue to ban prisoner voting in Provincial elections with three exceptions. Prisoners will be able to vote in provincial elections if: They are serving a total sentence of 10 days or less or they are serving a sentence because they were unable to pay a fine OR they have been convicted but not yet sentenced by the court.	Overall, would you say this new proposal for prisoner voting in provincial elections
---	--

	_	Gender	er		Age	_	i i	Education			Inc	Income	
	Total Male Female 18-34 35-54 55+ Less Sec. Univ.+ < 25K \$40K \$60K \$60K+	Male	Male Female 18-34 35-54	18-34	35-54	55+	HS or Less	Post	Post	< 25K	\$25K- \$40K	\$40K- \$60K	\$60K+
Base: All respondents	800	400	400	244	364	176	184	313	180	165	140	167	269
Weighted	800	406	394	289	306	191	188	314	174	167	145	163	264
Goes too far, that is, lets too many prisoners vote	18%	20%	17%	14%	20%	20%	19%	178	15%	14%	20%	21%	14%
Doesn't go far enough, that is, doesn't let enough prisoners vote	19%	20%	18%	23%	18%	15%	12\$	19%	26%	13%	25%	15%	20\$
Is about right	62%	59%	64%	62%	61%	64%	819	64%	58\$	728	55%	64%	\$99
(DK/NS)	40	*	- 24	*	-	34		*	1.8	1.8			•

	_	Gender	der		Age		Ш	Education	_		Inc	Income	
	Total Male Female 18-34 35-54 Less Sec. Univ.+ < 25K \$40K \$60K	Male	 Female 18-34	18-34	35-54	55+	HS or Less	Post Sec.	Univ.+	< 25K	\$25K- \$40K	\$40K- \$60K	\$60K+
		65 25 21 21 41 61		H H H H H	## ## ## ## ## ## ## ## ## ## ## ## ##	85 85 86 81 81	H	81 81 81 81 81 81 81	11 11 11 11 11 11 11 11 11 11 11 11 11	H H H H H	***************************************	H H H H H	# # # #
Base: Feel proposal goes too far	148	80	89	35	73	34	36	51	27	24	28	34	17
Weighted	145	80	65	41	61	38	36	52	26	24	29	34	36
They should not be allowed/ lost right upon crime	46%	50%	42%	36%	45%	57%	53%	42%	58%	51\$	43%	52%	43%
Only those convicted should lose their	26%	23%	318	378	278	14%	21%	30%	30%	19%	28\$	27%	25%
dgnc to vote/ II they haven't been convicted they should have the right													
Only those convicted should lose their right to vote	21\$	21\$	228	32\$	248	86	16%	24%	22%	19%	21%	27%	21\$
Severity of crime makes no difference	13%	36	1	12\$	10%	18%	18%	80	22%	178	*6	ار در	163
ends on the severity of the crime	78	\$6		10%	78	89	4.8	11%	**	13%	, 00	i Li	0 1
It shouldn't apply to those who can't afford the fine	3%	2.		78	34	'	1	7%		3%) (L))	1
I agree/ seems fair	1.00	170	,	,	1%	,	,	1	,	,	رب جبر	,	'
Other	118	11%	11%	% 9	1	10%	v %	80	13%	1	16%	50	13%
(DK/NS)	٠, چ	70		12%	*	**	24	*		ı	7.8	118	

	- !	# H H	11	Region		_	Aware of	Aware of Lawsuit	Overal	Overall Vote	Gov't Reaction	eaction		Voting Knowledge	owledge	
	Total Ca	1g.	Edm.	North	North Central South	South	Edm. North Central South Yes No Agree Aware Aware Correct Correct Correct	No ON	Agree	Dis- Agree	Aware	Not Aware	Correct	Correct Correct Correct	2 Correct C	orrect
Base: Feel proposal goes too far Weighted	148	46	47	21 19	15	19	108	40	 0 0	143	25	121	7 2 2	53	37	55 55 55
They should not be allowed/ lost right upon crime	46%	39%	38%	58\$	51%	819	468	478	18\$	478	52%	45%	40\$	52\$	43%	44%
Only those convicted should lose their right to vote/ If they haven't been	268	29%	28%	22%	26%	22%	28%	23%	17%	27%	478	22\$	'	24%	28\$	29%
convicted they should have the right Only those convicted should lose their right to vote	21\$	21\$	28\$	14%	10%	22\$	23%	178	178	21\$	39%	18%	1	20%	20%	24%
Severity of crime makes no difference	13%	138	15\$	80	23%	38	12\$	16%	178	13%	9	15%	408	138	10%	ά
Depends on the severity of the crime	7.8	78	36	,	4.8	15\$	*8	9	1	88	10%	78		2 40	17%	0 4
It shouldn't apply to those who can't afford the fine	38	2.8	28	*9	ı	% %	2%	78	1	34	90	30	1	9	, w	% ~
I agree/ seems fair	18	'	,	'	TU %	,	1.8	1	'	9/0	C.	1	'	*	-	
Other	118	118	15%	7.8	10%	78	118	10%		10%	. *		809	9 8	7.8	15.8
(DK/NS)	5.4	8 8	4 %	4 %	1	88	5.8	9	24%	r		7.8				200

e8b. Why do you say that? (Proposal doesn't go far enough)

	_	Gender	der		Age		ш	Education	_		Inc	Income	
	Total Male Female 18-34 35-54 Less Sec. Univ. + < 25K	Male	Female 18-34	18-34	35-54	55+	HS or Less	Post Sec.	Univ.+	<pre>====================================</pre>	\$25K- \$40K-	\$40K-	\$60K+
Rame. Feel proposal doesn't do too far				# U			H - C	H C	H C R R R			11 11 11 11 11 11 11 11 11 11 11 11 11	81 11 11 11 11 11 11 12
enough	2	3	0	r r	# D	N	12	, ,	20	17	34	57	55
Weighted	153	83	70	99	52	29	23	61	46	21	36	25	54
They should be allowed to vote/	54%	809	478	61%	478	488	61%	52%	59%	72%	41%	52%	62%
everybony has the right Depends on the severity of the crime	18%	18%	18%	18%	16%	24%	13	218	11%	19%	8	15%	178
Severity of crime makes no difference	36	2%	4.	9		,	1		· **	1			- 1
y those convicted should lose their	2%	18		2%	2%	3%	4 %	2%	,	1	. 99	,) 1
ht to vote	_												
y those convicted should lose their	2%	11	3%	2%	2\$	3,6	4	2%	,	,	**	,	
right to vote/ If they haven't been													
victed they should have the right	_	_		_		_		_					
I agree/ seems fair	1%	2%	,	1	3%	1	,	4	2%	1	'	36	C.
No reason	1%	1	1%	2%	,	,	1	1	'	1	,	,	2,8
Other	178	11%	23%	78	26%	23%	11%	20%	19%	90	20%		16%
(DK/NS)	78	7%		7.8				1		L			

Base: All respondents Weighted

Gender Male Female

18-24 25-34 35-44 45-54 55-64 65+ DK/NS

Age

MEAN

	01120	Gender		Gender Age Education Income	_	<u>வ</u>	Education	_		Inc	Income	
Total	Male	Female 18-34	18-34	35-54	55+	Male Female 18-34 35-54 Less Sec. Univ.+ < 25K \$40K \$60K	Post Sec.	Univ.+	Univ.+ < 25K	\$25K-	\$40K-	\$60K+
800 400 244 364 176 184 313 180 165 140 167 269	400	400	244	364	176	184	313	180	165	140	167	969
800	406	394	289	306	191	188	314	174	167	145	163	264
51\$	100\$	ı	53%	51%	4	40%	50%	n n	478	488	η. 4	T.
49%	,	100%	478	49%	54 %	51\$	50%	45%	53%	52%	46%	44
13%	15\$	11\$	36\$	ı	1	12%	16%	w %		13		1
23%	23%	23%	648	'	,	198	22\$	35%	248	29%	268	268
21\$	228	20\$	'	528	'	19%	23%	24%		16%		30
178	178	18%	1	458	1	15%	148	22%		13%		20
11%	10%	128	,	-	478	14%	12%	88		12%		10
13\$	118	148	1	1	53%	21\$	118	%		16%		2
2%	2%	2%	1	-	,	~ ~	11	3%		'		ī
42.9	41.6	44.2	26.5	43.7	7	46.5	42 1	0 04			,	0

z11. Which of the following describes the population of the town or city in which you live?

	-		פבוומבד		Age		m	Education	_		Inc	Income	_
	Total Male Female 18-34 35-54 55+ Less Sec. Univ.+ < 25K	Male	Female 18-34	18-34	35-54	55+	HS or Less	Post Sec.	Univ.+	25K	\$25K-	\$25K- \$40K- \$60K \$60K+	\$60K+
		H H H	11 11 11 11 11 11 11 11 11 11 11 11 11	# # # # # # # # # # # # # # # # # # #	H H H H H H H H H H H H H H H H H H H	11 11 11 11 11 11 11 11 11 11 11 11 11	11 11 11 11 11	11 11 11 11 11 11 11 11 11 11 11 11 11	H H H H H H H H H H H H H H H H H H H	11 11 11 11 11 11	H H H H H		- 11
Wase: All respondents	800	400	400	244	364	176	184	313	180	165	140	167	269
Weighted	800	406	394	289	306	191	188	314	174	167	145	163	264
1,000	10%	00	12\$	78	80	178	15%	80	4 %	10%	6/40	10%	9/5
- 10,000	198	18%	19%	178	22\$	15%	20%	18%	14%	19%	25.5%	20%	17.
- 50,000	148	15%	13%	13%	15%	15%	118	148	13%	128	12\$	 	12%
- 250,000	86	7%	10%	118	78	98	8 %	10%	90	78	*60	96	7%
Over 250,000	478	498	45%	51%	488	428	44%	468	61%	52%	4 4 %	46.8	44
	140	26	1.6	36	1								

	- 1	Gender	ler		Age		M	Education	c			Lucome	
	HS or Post \$28K- \$40K-	_			1		HS or	Post			\$25K-	\$40K-	***
	Total Male Female 18-34 35-54 Less Sec. Univ.+ < 25K \$40K \$60K \$60K+	Male	Female 18-34	18-34	35-54	55+	Less	Sec.	Univ.+	Univ.+ < 25K	\$40K	\$60K	\$60K+
Base: All respondents	800	400	400	244	364	176	184	313	180	165	140	167	269
Weighted	800	406	394	289	306	191	188	314	174	167	145	163	264
3rade school or some high school	14%	15%	148	10%	12\$	25%	61%	1	,	14%	16%		89
Completed high school	248	22\$	26%	25%	23%	24%	1	,	1	19%		24%	
ost secondary technical school	15%	218	10%	168	178	12%	,	398	1	18%		_	
ome university or college	15\$	10%	198	168	13%	16%	,	378	1	15%	16%		
Completed college diploma	36	8 8	118	10%	8 %	10%	39%	23%	,	118			10%
ompleted university degree	168	178	15%	178	20%	%	,	1	75%				
ost-grad degree (masters or PhD)	5.5	99	30	5%	89	4.8	,	1	25%		2.8	*9	
DK/NS)	1,6	2.8	*	,		1.8	,				_		

24. What one category best describes your current marital status?

	Gender	der		Age	_	<u>ы</u>	ducation	-				
Total	Male		Female 18-34 35-54	35-54	55+	HS or Less	Post Sec.	HS or Post Sec. Univ.+ < 25K \$40K \$60K \$60K+	25K	\$25K-	\$40K- \$60K	\$60K+
12 15 11 11 11 11	25 80 81 80 81 81 81 81	H H H H H H H H	H H H H		H H H H	92 53 50 61 61 62 63	11 11 11 11 12 15 16		H H H H H	11 11 11 11	H H H H H H	11 42 21 01
800	400	400	244	364	176	184	313	180	165	140	167	269
800	406	394	289	306	191	188	314	174	167	145	163	264
24%	29%	18\$	478	118	10%		24%	248	24%			
63%		199	468	778	65%	_	61%	889	59%	61%	71%	75%
12%		16%	40	12\$	25%	148	15%	%	178	13%	90	
34	30	*				_		0 1		_		_

Single
Married or co-habitating
Divorced/widowed/separated
(DK/NS)

Base: All respondents Weighted

- 1 - 1 - 1 - 1 - 1	Gender	Gender Age Education		Age	_	ы	Education	_		Inc	Income	
		_				HS or	Post		# 		\$40K-	H H H H
Total	Male	Female 18-34	18-34	35-54	55+	Less	Sec.	Univ.+ < 25K	< 25K	\$40K	\$60K	\$60K+
# # # # # #	# # # # #		# # # # # #	H H H	H H H H	H H H H H H		11 11 11 11 11 11 11 11 11 11 11 11 11	# # # # #		11 11 15 10 10 11	H H H H H
800	400	400	244	364	176	184	313	180	165	140	167	269
800	406	394	289	306	191	188	314	174	167	145	163	264
16%	19%		13%	12%	29%		18%	148	218		148	
33%	31%	35%	298	23%	55%	378	33%	36%	29%	30.6	34.	30%
18%	178		218	21\$	10%		20%	16%	21%		100	
20%	20%		228	28\$	4 %		20%	20%	188		23%	
8 0	% 80		*60	118	1%		90	96	78		00	
4.	4 %		9	4.8	18		23	3%	38		- ru	
*	*		*	*	1	1	,	•	18		*	
*	*	,	'	*	,	•	,	*	1	•	*	
*	*	1	'	*	,		,	,	,			
17	2%	1%	•	'	1%	•	•	18	,	*	. 1	' '
2.8	2.8	2.8	3.0	3.2	1.9	2.7	2.7	2.8	2.8	2.6	3.0	3.3
1.4	1.5	1.3	1.4	1.4	6.0	1.4	1.3	1.4	1.4	1.3	1.5	1.3
*	0.1	0.1	0.1	0.1	0	-	-	c	-	-		

Base: All respondents Weighted

MEAN STD DEV STD ERR

One Two Three Four Five Six Seven Eight Nine (DK/NS)

27. Which of the following categories best describes the total amount income, before taxes, of all members of your household combined?

 $z8\,.$ And is there one sole income earner in the household, or are there two or more income earners?

	Gender Age Education Income	Gender	er		Age	_	E)	Education	_		Inc	Income	
	Total Male Female 18-34 55+ Less Sec. Univ.+ < 25K \$60K+	Male	Female 18-34	18-34	35-54	55 = = = = = = = = = = = = = = = = = =	HS or Less	Post Sec.	Univ.+ < 25K	< 25K	\$25K-	\$40K-	\$60K+
Base: All respondents Weighted	800	400	400	244	364	176	184	313	180	165	140	167	269
		00.	124	263	306	191	997	314	174	167	145	163	264
Income													
Less than \$15,000	89	TU %	78	5.5	4	11%	10%	78	9/0	29%	,		,
1,000 to \$24,999	108	86	12%	118	98	148	118	%	30	,	,	1	,
,000 to \$39,999	18\$	178	198	218	148	22%	18%	18%	96	,	100%	,	
1,000 to \$59,999	20\$	22\$	198	20%	23%	198	23%	22\$	218	,	1	100%	1
,000 to \$79,999	15\$	148	15\$	178	178	86	12%	17%	22%	718	,	1	45
1,000 to \$99,999	*80	86	78	% %	118	3%	№	10%	11%	,	,	1	24%
10,000 and over	10%	13%	78	86	15%	4.8	TU %	89%	23%	,	1	1	313
DK/NS)	12\$	118	14%	*6	98 8	18%	15%	11%	%6	,	,	,	1
Income earners			www.										
One	378	34%	418	32%		468	418	378		36%		418	169
+ 0	1809	63%	26%	849	61%	208	57%	61%	\$69	64%	52%	59%	84%
(/NS)	3%	3%	38	94		4.8	3,6	2%		,	_		

ela. Have you personally seen, read or heard anything over the past year or two about a lawsuit related to prisoners voting in provincial elections here in Alberta?

| Region | Aware of Lawsult | Overall Vote | Gov't Reaction | Voting Knowledge

elb. What did you see, read or hear about this?

"	Total	Calg.	Edm.	North	North Central	South	Yes	NO	Agree	Dis- Agree	Aware	Not Aware (orrect	orrect	Correct Correct Correct	orrect
ela Aware of lawsuit related to prisoners voting in Base: All respondents 800 800 800 800 800	s voting 800 800	in provi 254 243	provincial el 254 276 243 276	ections 108 114	here in 80 84	elections here in Alberta? 5 108 80 82 5 114 84 83	552	245	192	603	111	676	36	258	273	233
Yes (Aware) No (Unaware) (DK/NS)	32%	70%	74% 25% 1%	39%	804	60%	100%	100%		70%	86 % 14 %	30.00	8 % % 8 0 0	39%	73%	30%
elb. What did you see, read or hear about this?	t this?															
Base: All respondents Weighted	552	182	204	69	50	51	552	t I	125	423	96	446	24	164	201	163
Prisoners filed a lawsuit Prisoners wanting to vote/ think they have the right	26\$	26%	26%	21%	16%	40%	26%	1 (25%	26%	30%	25%	23 %	23.8	28\$	26%
Alberta Government introducing new/ amended Election laws because of court decision	*6	10%	80	118	11%	3%	86	,	10%	*6	7%	%	23%	13%		7%
Prisoners were allowed to vote A debate whether they have the right to	78	14%	n n	n n	0 to	w n	78	1 1	7 8 %	98	11%	7 %	ا و	96 %	8 6	8 %
Lawsuit heard by Alberta Courts (Court of Abbeal or Oneen's Bench)	78	\$0	7\$	'	80	* 9	7%	1	78	78	10%	89	00 %	%	%	*9
Alberta Appeals Courts held parts of Alberta Election laws unconstitutional	7%	7.8	7%	90	'	16%	78	,	*9	78	10%	99	3%	%	90	78
People opposed the idea of prisoners	4.8	%	*	20	3,	5.8	%	1	7.8	38	7.8	3.8	78	80	25	1.8
Prisoners may be given the right to vote People think they should be allowed to vote	# # M M	2 4 % %	2%	4 %	4 I	7.8	w w % %	1 1	1 2%	3 33	28	w w	1 1	20 44	2 %	4 K
Government is against it/ doesn't want to give the right	3%	%	2%	3.	*	2%	₩.	1	5,	2%	7.8	2.8	35	2%	*	2.8
Prisoners were refused the opportunity	2.8	1.8	28	1%	1 %	3.8	28	'	2\$	2%	28	1%	,	,	94	*
Prisoners lose their privilege when in	18	1	1 %	4	3.8	,	1%	'	18	2%	1	2%	,	2%	- Ac	18
Some should vote/ some should not (unspecified)		₩ H	1.	1.	€	1	1%	1	1\$	13%	%	1.8	'	7,		2.8
Prisoners lobbying/ petitioning for the right to vote	18	1%	i.i	2.8	•	'	1%	1	1	₩	1	13	,	13	*	1%
Personal opinions	2%	13%	2%	*	1	'	2%	1	₩	H %	2%	2%	1	38	2%	*
Other	3.8	1 4,	2%	3 %	1 40	a‱ 1 mi	* m	1 1	7 %	* 2	, v	* m	1 1		₩ ₩ ₩ ₩	- 0
(DK/NS)	13%	10%	15%	148	25%	78	13%	,	178	12%	13%	14%	278	148	118	148

- e2. Please tell me whether you believe the following statements to be true or false.

- a.) The Canadian Charter of Rights and Freedoms guarantees the right of Canadian citizens to vote in the election of federal MPs and provincial MLAs.
 b.) Prisoners serving a jail sentence on Election Day HAVE NEVER voted in an Alberta provincial general election.
 c.) During the last provincial general election, there was a law in place banning ALL prisoners serving a jail sentence on Election Day from voting.

H — II			11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Region	11 11 12 13 14 16 16		Aware of	Aware of Lawsuit	ii	Overall Vote	Gov't Reaction	saction	===	Voting Knowledge	owledge	H
	Total Calg.	Calg.	Edm.	North	Central	South	Yes III	N N	Agree	Dis-	Aware	Not Aware	Correct	Not Ourect Correct Correct	2 orrect C	3 orrect
Base: All respondents Weighted	800	254	276	108	84	83	552	245	192	603	111	676	34	258	273	233
a.) The Canadian Charter of Rights and Freedoms guarantees	reedoms g	 uarantee; 	s the right	of	anadian		to vote in		the election of	f federal	1 MPs and		provincial MLAs	·		
True False (DK/NS)	868 108 58	80 70 00 00	86% 10%	9 8 10 12 8 18 18	833 128 58	14%	80 70 00 10	87% 11% 3%	83% 10% 6%	878 10% 4%	86% 12%	10%	- 52 4 - 4 4 8 * %	118	11.8	100%
b.) Prisoners serving a jail sentence on Election Day	Election	Day HAVE		NEVER voted in	an Alberta		provincial general election.	neral ele	sction.							
True False (DK/NS)	3.9% 1.3%	4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	49% 39% 12%	48%	53% 33% 14%	45% 41% 14%	4 9 % 3 8 % 1 3 %	468 418 138	4 4 4 2 2 4 8 2 8 %	50% 36% 14%	37%	378	- 4 7 7 8 1 8 4 8 4 8 4 8 8 8 8 8 8 8 8 8 8 8 8	78 718 218	478	100%
c.) During the last provincial general election, there was	ection,	there was	s a law in	in place	banning		ALL prisoners serving a jail	rving a		ence on	sentence on Election	Day from	m voting.			
True False (DK/NS)	31% 11%	53% 11%	568 308 14\$	57% 31% 12%	300%	50% 31% 19%	20 8 % 14 % %	488 388 44 44	36%	58% 29% 13%	30%	315 314 148	548	6 2 % 2 9 % 2 9 %	67 % 99 %	100%
SUMMARY OF CORRECT ANSWERS																
None True One True Two True Three True	4 C C C C & & & & & & & & & & & & & & &	3 2 5 % 3 2 8 % 3 3 4 %	44 318 378 298	33.48	28% 38% 31%	36% 43% 18%	2 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	2 2 3 4 4 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	2 3 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	3 4 4 %	33.8	3328	100%	100%	100%	100%

ed. 1'm going to read you some statements about the issue of prisoner voting, and 1'd like you to tell me if you personally agree or disagree with each?

			H H H H H H H H H H H H H H H H H H H	Region			Aware of	Lawsuit	Overall Vote	i —	Gov't Re	Reaction	# H H H H H H H H H H H H H H H H H H H	Voting K	Knowledge	H —
	Total	Calg.	Edm.	North	Central	South	Yes	No	Agree	Dis- Agree	Aware	Not Aware	Correct	Correct C	Correct Correct Correct	orrect
Base: All respondents Weighted	800	254	276	108	8 8 4 8 4	82	552	245	192	603	111 109	676	36	258	273	233
a.) Prisoners should be allowed to vote because	because	it will p	promote lessons about	essons	bout res	 responsible	 citizenship?	lip?								
Strongly agree Moderately agree	10%		12%	13%	48	10%	9%	13%	38%	18 7	14%	10%	128	15%	88 %	8 %
moderately disagree Strongly disagree (DK/NS)	22% 51% 1%	513	18 53 28	25%	53%	53%	20% 55% 1%	25% 43% 1%	11%	25%	11% 58% 1%	24%	50%	19%	24%	22%
Top2box (Agree) Low2box (Disagree)	26%	25%	28%	31\$	22%	24%	24%	318	818	918	30%	26%	25%	31%	268	21%
b.) Prisoners are deprived of many rights of citizer	s of cit	zenship	- the right	ht to vote	ote should	ld be one	e of them?	_								
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	48\$ 16\$ 13\$ 22\$	45% 18% 12% 25% 1%	488 138 238 18	45\$ 20\$ 12\$ 22\$	15%	568 128 128 -	4 H H H H H H H H H H H H H H H H H H H	4 H H H H H H H H H H H H H H H H H H H	16% 19% 28% 37%	0 1 1 1 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	12% 12% 25% 11% 13%	168 138 138 138	17.8 11.8 12.8 5.8	44 35 45 45 45 45 45 45 45 45 45 45 45 45 45	4 6 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	56 113 203
Top2box (Agree) Low2box (Disagree)	35%	378	61%	34 %	72\$	32%	36%	33%	35%	74%	378	35%	72%	61%	38%	69%
c.) Prisoners should be allowed to vote as part of	as part	ı	heir rehabilitation back	tation b	ack into	 society?	~				-					
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	13% 20% 17% 47% 2%	13% 20% 20% 46% 13%	1138 1138 318	15% 26% 17% 39%	19% 20% 53% 1%	18% 18% 44% 2%	111 1198 1108 1108 1108 1108 1108 1108 1	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	2 \$ \$ 2 \$ \$ \$ \$ 6 2 \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	16% 18% 7% 57%	13 % 19 % 19 % 2 % %	22.8 22.8 35.8 12.8	16% 20% 19% 43%	2 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	118
Top2box (Agree) Low2box (Disagree)	34%	33%	33%	42%	278	36%	31%	418	878	16%	358	34%	31%	36%	378	28%

e3. I^{Im} going to read you some statements about the issue of prisoner voting, and I^{I} d like you to tell me if you personally agree or disagree with each?

	11 11 12 12 12 14 14 14 15 15 15 15 15 15 15 15 15 15 15 15 16 16 16 16 16 16 16 16 16 16 16 16 16	11 11 11 11 11 11 11	11 11 11 11 11	11 11 11 11 11 11 11 11 11 11 11 11 11	84 92 91 91 11 12 12	80 85 87 87 81	11 21 21 21 21 21 21 22 22 23 24	1 1 1 1 1 1 1								
		1	1	Region		-	Aware of	of Lawsuit	Overall Vote	_	Gov't Re	Reaction		Voting K	oting Knowledge	# ————————————————————————————————————
	Total Ca	Calg.	Edm.	North	Central	South	Yes	No	Agree	Dis- Agree	Aware	Not Aware	Correct	Correct	Correct Correct Correct	3 orrect
Base: All respondents Weighted	800	254	276	108	84	83	552	245	192	603	111	676	36	258 254	273	233
d.) A jail is not a place where democratic practices	tic practi	ices can	be freely	y exercised?	sed?											3
Strongly agree Moderately agree Moderately disagree Strongly disagree	4 C H H H H H H H H H H H H H H H H H H	2 2 2 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	42% 22% 118%	39% 27% 11%	3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	338	4.6.4.4.4.4.4.4.4.4.4.4.4.4.4.4.4.4.4.4	42% 29% 13% 14%	118 248 248 378	26% 10% 8%	4 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	24 C C C C C C C C C C C C C C C C C C C	428 278 148 847	408 248 168	4 2 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	49% 255% 113%
(DK/NS) Top2box (Agree)	98 38	38	64 8	4 \$ 66 \$	78	2%	3\$	28	35%	22 808	3.8	38	12%	, k 4,	22 %	1 t 4
LOWALDOX (DISAGree)	29%	268	34%	30%	18%	23%	298	278	618	18%	30%	29%	19%	33%	30%	23%
e.) In order to promote respect for the law prisoner	law prisc	Ø	should not be	be allowed	ed to vote?	te?										
Strongly agree Moderately agree	51%		518	40%	58%	56%	53%	468	% % O O	99 %	00 % 4 %	50%	42%	41%	50%	64%
Moderately disagree Strongly disagree (DK/NS)	15%	14%	13.	15%	16%	18%	10.8%	178	37%	, % % % , % % %	13%	10.6	20 % % 0	1000	100%	13%
Top2box (Agree) Low2box (Disagree)	67% 31%	0 0	33%	20%	718	35%	31%	338	15%	85%	33%	678	30%	380 %	34%	78%
f.) A free and democratic society should allow ALL p	dallow AI	Lb prisoners		to vote?		-										
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	12% 12% 19% 57% 1	13% 20% 55% 1%	1128 1178 1178 588	178 178 238 528	11 12 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	15% 7% 16% 62%	111 108 1198 188 188	411 421 422 422 423 444	44 84 84 84 84 84 84 84 84 84 84 84 84 8	22.3.4.	118	11 12 2 2 2 3 2 3 3 3 3 3 3 3 3 3 3 3 3	12% 23% 54% 8%	11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	11 12 12 13 14 14 14 14 14 14 14 14 14 14 14 14 14	19%
Top2box (Agree) Low2box (Disagree)	238	248	23\$	25%	24%	228	218	29%	19%	95\$	218	24%	148	29%	25%	17%

				Region	H H H H H H H H H H H H H H H H H H H		Region Aware of Lawsuit Overall Vote Gov't Reaction Voting Knowledge	Lawsuit	Overal	Vote	Gov't Re	action	Overall Vote Gov't Reaction Voting Knowledge	Voting Knowledge	owledge	#
	Total Ca	Calg.	Edm.	North C	North Central South	South	1g. Edm. North Central South Yes No Agree Agree Aware Aware Correct Corr	No No	Agree	Dis-	Aware	Not Aware C	Not 0 1 2 3 Aware Correct Correct Correct	orrect C	2 orrect Co	rrect
Base: All respondents Weighted	800	254	276	108	84	83	552	245	192	603	111	676	36	258	273	233
g.) People convicted of crimes forfeit ALL of their	LL of the	ir rights	while	in jail?												
Strongly agree	54%	49%	54%	59%	56%	26%	53%	55%	118	889	56%	53%	52%	44	518	67%
Moderately agree	10.0	19%	168	12%	15%	86	15%	16%	148	16%	86	178	138	21\$	148	12%
Moderately disagree	15%	12%	16%	18%	12%	19%	16%	13%	32%	10%	118	16%	20\$	13%	18%	12%
Strongly disagree	15%	18%	13%	12%	16%	148	148	15%	428	9	238	13%	78	20%	168	* 6
(DK/NS)	#P	مه ۳-۱	2*	'	17 17	2.8	- A6	36	2%	*	1 %	18	8	1%		
Top2box (Agree)	\$69	68%	70%	70%	71\$	65%	68%	718	25\$	84%	65%	108	902		- %	78%
Low2box (Disagree)	30%	30%	29%	30%	29%	33%	308	288	74%	15%	34%	298	278	33%	34%	218

e3. I'm going to read you some statements about the issue of prisoner voting, and I'd like you to tell me if you personally agree or disagree with each?

SUMMARY TABLE

		Region		Region		11 ———————————————————————————————————	Region Aware of Lawsuit	Lawsuit			Gov't Reaction	eaction	H H H H H H H H H H H H H H H H H H H		Voting Knowledge	#
	Total	Total Calg. Edm. North Central	Edm.	North Central	Central	South	Y	Yes No Agree Agree	Agree	Agree Agree	Aware	Not Aware	Aware Not Correct Correct Correct	Correct	Correct Correct	3 Jorrect
Base: All respondents Weighted	800	254	276	108	84	833	552	245	192	603	111	676	34	258	273 279	233
TOP2BOX SUPWARY (AGREE) a.) Prisoners should be allowed to vote because it will promote lessons about	26%	25\$	28\$	31\$	22 %	248	24%	31%	818	80	30%	26%	, S S S	31%	26%	21%
responsible citizenship b.) Prisoners are deprived of many rights of citizenship - the right to	64\$	63\$	61%	65%	72\$	98	63%	\$99	35	74%	63%	64%	72%	618	61%	\$69
Vote should be one of them c.) Prisoners should be allowed to vote as part of their rehabilitation back	34%	33%	33%	42\$	278	36%	318	418	878	168	35.	34%	318	36%	378	28\$
d.) A jail is not a place where democratic practices can be freely	68	71\$	64%	999	74%	74%	67%	718	30.0%	80%	67%	869	1869	64%	68%	74%
e.) In order to promote respect for the law prisoners should not be allowed to	678	869	64%	\$69	718	64%	819	849	15%	85%	67%	678	63%	809	65%	78%
voce allo A free and democratic society should allow ALL prisoners to vote	23\$	248	23%	25\$	24%	22\$	21%	29\$	808	n %	21%	24%	14\$	29\$	25\$	17%
g.) People convicted of crimes forfeit ALL of their rights while in jail	\$69	68\$	70%	70%	718	90	98	71%	25\$	848	65%	70%	65%	65%	65%	78%

e3. I'm going to read you some statements about the issue of prisoner voting, and I'd like you to tell me if you personally agree or disagree with each?

SUMMARY TABLE

	- B		# # # # #	Region	H H H H	11 11 11 11 11 11	Aware of Lawsuit	Lawsuit	Overall Vote	- 1	Gov't Reaction	saction		Voting Knowledge	owledge	
	Total	Total Calg. Edm.		North	North Central	South	Yes	No	Agree	Dis-	Aware	Not Aware	Correct (Not 0 1 2 3 Aware Correct Correct Correct	orrect C	3 Correct
Base: All respondents Weighted	800	254	276	108	88 44	83	552	552 245 192 603 544 253 198 597	192	603	D	676	34	111 676 36 258 273 109 678 34 254 279	273	233
LOW2BOX SUMMARY (DISAGREE)																
a.) Prisoners should be allowed to vote because it will promote lessons about remonsible cittoenein	73%	74%	71\$	\$69	78%	76%	75\$	89	198	918	\$69	73\$	\$69	% 8 9	73\$	78%
b.) Prigores are deprived of many rights of citizenship - the right to vote should be one of them	35%	378	38%	34%	278	32\$	36%	33	65%	26%	378	35%	23\$	378	38%	31\$
c.) Prisoners should be allowed to vote as part of their rehabilitation back into society	65\$	\$99	65%	56%	72\$	62\$	% 89 9	55 88 88	11%	83\$	63%	65%	57%	62%	62%	72\$
d.) A jail is not a place where democratic practices can be freely exercised	29%	26%	34%	30%	18\$	23%	29%	27%	618	18%	30%	29%	19%	33%	30%	23%
e.) In order to promote respect for the law prisoners should not be allowed to vote	31%	29\$	33%	29%	29%	35%	31%	E E %	85%	138	33%	31%	30%	388	348	21%
f.) A free and democratic society should allow ALL prisoners to vote	16%	75%	75\$	75%	16%	78\$	78%	718	19%	95%	778	75%	778	10%	74%	83
g.) People convicted of crimes forfeit ALL of their rights while in jail	30%	30%	29%	30%	29\$	33%	30%	28%	748	15%	34%	29%	278	33.84	34%	21\$

e4a. Overall, how do you feel about the issue of prisoners voting in provincial elections? Would you say you agree or disagree that ALL prisoners serving a jail sentence on Election Day SHOULD be allowed to vote in provincial elections?

	## ## ## ## ## ## ## ## ## ## ## ## ##	#1 #1 #1 #1 #1 #1	11 11 11 11 11 11 15	Region ========	10 10 10 10 10 10 10 10		Region Aware of Lawsuit Overall Vote Gov't Reaction Voting Knowledge	Lawsuit	Overall Vote	וו יטום	200			oting Kr	Voting Knowledge	
	Total Cal	Calg.	Edm.	North	Edm. North Central South	South	Total Calg. Edm. North Central South Yes No Agree Agree Aware Correct Correct	ON II	Agree	Dis-	Aware	Not Aware	Not 0 1 2 3 Aware Correct Correct Correct	orrect C	orrect (Jorrect
Base: All respondents	800	254	276	108	80	82	552	245	192	603	111	929	36	258	273	233
Weighted	800	243	276	114	84	83	544	253	198	597	109	678	34	254	279	232
Strongly agree	12\$	148	14%	86	₩ 00	118	12%	13%	50%	,	14%	12%		17.0%	34	6
Moderately agree	12\$	11%	12%	15%	12%	15%	118	15%	50%	1	118	13%	14%	15%	14%	000
Moderately disagree	15%	15%	12%	22%	16%	118	15%	15%	1	20%	10%	168	23%	17%	13%	14%
Strongly disagree	809	%09	809	54%	65%	648	62%	26%	,	808	65%	59%	518	53%	20%	70%
(DK/NS)	11 0%	₩ 	مرد ا	,	'	1	1%	,	,	,	1%	*	5%	*	*	1
Top2box (Agree)	25\$	25\$	27%	24%	198	268	23%	29%	100\$	1	24\$	25%	20%	30%	278	178
Low2box (Disagree)	158	158	72\$	168	818	74%	168	718		100\$	75%	75%	74%	70%	72%	83%

	- 1	_ !	#1 13 01 01 01 01	Region	11		Aware of	Lawsuit	Overall Vote	1 Vote	Gov't Re	Reaction		voting Knowledge	.eeeee	H
	Total Ca	Calg.	Edm.	North	Central	South	Yes	ON N	Agree	Dis- Agree	Aware	Not Aware	Correct	orrect	Correct Correct Correct	orrect
Base: Prisoners should be allowed to	192	09	74	24	14	20	125	99	192	0 0 0 1 1 1 1	28	162	7	73	75	37
Weighted	198	09	74	27	16	21	125	73	198	'	27	170	7	192	76	39
Everyone should have the vote/ why take it away?	28%	22\$	31%	35%	39%	22\$	20%	418	28%	'	20\$	308	29%	31%	29%	21%
A needed connection to the outside world/rehab	22\$	23%	19%	22\$	15\$	33%	268	15%	22\$	'	36%	20%	38\$	27%	15%	21\$
They are still human/ deserve some rights	21\$	278	18%	19%	22\$	23%	21%	22\$	218	1	26%	20\$,	23%	248	18%
They are still citizens/ live in this	198	25\$	20%	11%	% 80	16%	178	218	198	'	118	198	,	16%	15%	35%
Depends on the crime Not having the vote violates the Charter	13\$	12%	786	29%	12\$	16%	14%	12%	13%	1 (3%	14%	19%	% % **	15%	178
We are a democracy	8	il Li	7				i		-;							
If their sentence is nearly finished	* C		, L	۴ ۱	4 6		V -	A) 4	4 C		w ≤	4 (,	₩,	₩.	nu %
Should be punished for breaking the law			, m		2 1	•	- N	6 %	2 6 9 0	' '	4	2 6		140	٠, د په م	, ,
Once you are a prisoner you forfeit all	2%	2%	3%	'	'	'	2 %	1 %	2 %	'	,	2 0	, ,	- H	 	 % % %
They must earn it/ prove themselves/ be	1%	1	'	'	80	,	1%	1	- % - I	'	'	*	19%	1	'	,
Formal traces Should be selected had their chance thought about it before had	d 1%	2%	1	'	,	,	8	,		'		1%	'		'	w %
By their poor judgement/ their actions/	18	1	1%	'	1	1		1	₩	,	'		1	340		,
Give up your citizenship rights when you	u 18	1	1.8	1	1	,		'	-% H	,	1	1%	,	1	18	'
commit a crime Should forfelt their right to vote/ privilege to vote	1.%	ı	1%		1	1	1	1%		t	'	₩	,	1		,
Mar would be the point? / not	*	28	ı	1	1	'	1	**	*	1		7%	1		'	
They law, society/ they law, society/ their victims	*	1	1	1	3.5	1	13%	,	*	,	т ж	'	'	1		1
Other (DK/NS)	2 %	3.	98	W W	24%	3%	% % ~	n n	7 %	1 1	10%	7.8	14%	2/2 0/2	10%	2%
						•	-	,	-	-		, ,	-	1 9 5	0.7	

				Region	E B B B B B		Aware of	Aware of Lawsuit	Overa	Overall Vote	Gov't Reaction	eaction		Voting	Voting Knowledge	
	Total	Calg.	Edm.	North	Central	South	Yes	ON	Agree	Dis-	Aware	Not Aware	Correct	Correct	Correct Correct	Correct
Base: Prisoners should not be allowed to	603	192	199	84	99	62	423	179	10 10 10 10 10 10 10 10	603	8 2 8	512	27	184	196	196
Weighted	597	181	199	87	89	62	416	180	•	597	81	507	26	177	201	193
Once you are a prisoner you forfeit all	31\$	28%	32%	318	31\$	418	29%	378	1	31%	37%	31%	27%	32%	318	32%
Should forfeit their right to vote/	24%	26%	20\$	24%	33%	25%	26%	20%	•	24%	26\$	24%	40\$	19%	25.8%	26%
privilege to vote Should be punished for breaking the law		248	16%	19%	20%	22%	20%	21%		20%	24%	961		0		
Should lose some participation rights in	10%	12\$	% €	80	96	118	12\$	%	1	10%	80	10%		13%	7 %	118
Depends on the crime	10%	86	10%	13%	10%	70%	10%	34	,	10%	10%	10%		178		8
Should forfeit some other rights	* 60		5.8	₹0	10%	36	78	\$6	1	80	80	80	11%		* 6 T	7 0
They lack respect for the law/ society/	90	%	* 4	80 %	10%	7%	9%	5.8	1	%9	78	70		. TU		- 4
Should have thought about it before/ had their chance	η. Ψ	4,	r.	40	80	2.8	n %	بى چە	1	Ţ,	4,	rV %	80	28	4.8	CO %e
They must earn it/ prove themselves/ be	4 %	50	4 %	5	•	4%	35	2%	,	49	9	4	4	3,8	4.	ru %
rehabilitated Give up your citizenship rights when you	* 4	TU %	4.8	₩ %	2		44 %	3%	4	%	rU %	ري جو	3,			2
Commit a crime Prisoners have it good	36	- *c	- 4	,	-		ď	,			4					
What would be the point? / not	25.0	20 00	- -	96 9	4 LJ		n w	2 0	1 1	% C	2%	w) w	1 1	~ ~	4, 0	
participating in society Ry their noor independit their notions/	C	ć								ì	1	ก็				
not responsible	2.2	2	ما اده	λ) %	\$ 7	'	2%	% %	1	2%	1	2	'	23	ب پ	₩
They don't care about voting/ do they	**	1%	28	28	18	1	1%	₩ ₩	1	1%	18	18	,	18	*	3%
If their sentence is nearly finished	*	96 	1	,	2%	1	*	9/4	,	*	1	*	A 4			
They are still human/ deserve some	*	,	1	1	2%	1	1	- %	1	*	1	*	+ 1		1	18
veryone should have the vote/ why take	*	ě	ı	18	1	1	ı	1.8	•	*	,	*	1	18	,	,
A mental onnection to the outside	*	ı	1 %	1	,	,	*	1	•	*	,	*	1	,	,	11
Other (DK/NS)	22.05	3.8	1 %	3 %	4 4	1 4,	N 02	3.6		2 5	1 %	2 2 %	; ;	1.57	2 7 %	2 22

. Voting restrictions are placed on prisoners in Australia, the United Kingdom and the United States	With this in mind, would you say you agree or disagree that ALL prisoners serving a jail sentence on Election Day SHOULD be allowed to vote in provincial elections?	
Voting restrictions are p	With this in mind, would Election Day SHOULD be al	

			11 12 12 14 31 24 22 11 11 11 11 11	Region		# 	Region Aware of Lawsuit Overall Vote Gov't Reaction Voting Knowledge	Lawsuit	Overall	Vote	Gov't Re	action		Voting Knowledge	wledge	H
	Total Ca	Calg.	Edm.	North	North Central South	South	1g. Edm. North Central South Yes No Agree Agree Aware Aware Correct Corr	 0 N	Agree	Dis- Agree	Aware	Not Aware C	Correct Correct Correct	1 	z vrect Co	3 orrect
Base: Prisoners should be allowed to vote	192	09	74	24	14	20	125	99	192	1	28	162	7	73	75	37
Weighted	198	09	74	27	16	21	125	73	198	'	27	170	7	16	16	39
Strongly agree	448	438	49%	31%	43%	468	88	378	448	•	809	42%	488	45%	42%	46%
Moderately disagree	800	4- 1 11 6 9	24.8	474		414	36%	46%	39%	'	32%	40%	388	348	488	34%
Strongly disagree	2	11.0	163	\$17		4° 6	% e	10%	* 6	'	9	10%	14%	13%	5.8	10%
(SN/NC)			P =	, (30	0	9	2%	%	1	₩ ₩	9	1	8 %	%	30
	1	,	MP →	9	'	'	*	مد ا	*	1	,	مبر _ه اسا	,	1.8	'	4 %
Top2box (Agree)	84%	84%	82%	73%	95%	806	838	848	84%	'	918	828	868	78%	-806	818
Carpor (Creatice)	125	16%	16%	21%	_	10%	16%	15%	15%	-	\$6	16%	148	20%	10%	16%

e5. Please tell me whether you personally agree or disagree that people falling into these categories SHOULD be able to vote in provincial elections?

	11	# H		Region	11 11 11 12 13	- !	Aware of	Aware of Lawsuit	i	Overall Vote	Gov't Reaction	action	H H H H G G	Voting Knowledge	owledge	—
	Total	Calg.	Edm.	North	Central	South	Yes	ON	Agree	Dis- Agree	Aware	Not Aware	Correct	Correct (Correct Correct Correct	orrect
Base: All respondents Weighted	800	254	276	108	84	83	552	245	192	603	111 109	676	36	258	273 279	233
a.) Those convicted of an offence but who have not	ho have no	l ot yet begun	 gun serving	Ing their	r sentence?	ce?										
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	20 222 37 37 37 37 38	222* 36* 36*	222 128 368	18 25\$ 23\$ 31\$ 2\$	22 11 14 24 70 70 70 24 78 78 78 78 78 78 78 78 78 78 78 78 78	168 278 108 408	22 0 0 1 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	22 22 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	3 S S S S S S S S S S S S S S S S S S S	0 1 2 4 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	20%	3 2 2 2 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3	320 % % % % % % % % % % % % % % % % % % %	22 22 4 % % % % % % % % % % % % % % % %	2 1 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	16% 22% 39% 1%
Top2box (Agree) Low2box (Disagree)	42%	40%	43%	43%	378	43%	40%	478	89%	26%	418	42%	444%	42% 55%	52%	38%
b.) Those serving a total sentence of 10 days or less?	0 days or	less?														
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	36% 32% 13% 18%	35% 34% 12% 18%	37% 30% 14% 18%	428 378 128	22 3 2 4 8 8 4 8 4 8 8 4 8 8 8 8 8 8 8 8 8 8	238 1108 1108	33 34 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	4 K H H	23%	248 368 178 238	8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	13%	22 8 8 1 1 2 2 8 8 1 1 1 2 2 8 8 1 1 1 1	1 1 1 3 3 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	39%	31%
Top2box (Agree) Low2box (Disagree)	318	308	32\$	79%	61%	33%	33%	73%	96%	59%	36%	308	39%	70%	738	378
c.) Those serving a total sentence of less than	ess than	years?														
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	10 20 20 10 42 42 42 42	19% 18% 22% 41%	20 20 40 40 40 40 40 40 40 40 40 40 40 40 40	100 mm m	11 12 24 44 44 44 44 44 44 44 44 44 44 44 44	21% 22% 13% 42%	18% 108% 448% 22%	22 12 % 44 % 37 %	3.00	16 23 % 55 %	20% 18% 13% 49%	1 2 0 9 % 4 1 1 9 % % 4 1 1 8 % % 4 1 1 8 % 4 1 1 8 % 4 1 1 8 % 4 1 1 8 % 4 1 1 8 % 4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	10 % % % % % % % % % % % % % % % % % % %	222 228 178 388	18% 22% 17% 17% 18%	178 168 208 478 18
Top2box (Agree) Low2box (Disagree)	39%	378	418	418	27%	44 C % % %	3 3 3 %	468	918	218	37%	39%	288	44% 55%	59%	338
	_		_				_	_								

			\$1	Region			Aware of	Aware of Lawsuit	i	Overall Vote	Gov't Re	Reaction		/oting K	Knowledge	H
	Total Cal	Calg.	Edm.	North	Central	South	Yes	N .	Agree	Dis- Agree	Aware	Not Aware	Correct Correct Correct	Jorrect	Z Correct (3
Base: All respondents Weighted	800	254	276	108	8 8	83	552	245	192	603	111	676	36	258 254	273	233
d.) Those convicted of crimes against people like murder	 	murder,	manslau	manslaughter and	d rape?											
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	7 0 0 7 7 7 96 96 96 96 96 96 96 96 96 96 96 96 96	* * * * * * * * * * * * * * * * * * * *	10% 4 % 7 % 7 %	4 7 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	0 0 0 0 c	00 00 00 00 00 00 00 00 00 00 00 00 00	2007	. * * * * D C O O	26% 111% 35%	1 * 4 \$ 95 \$ \$	118 88 68 758	8 2 2 %	8 22 %	10% 8% 8% 74%	7 0 10 7	N 4 4 0 % % % %
Top2box (Agree) Low2box (Disagree)	148	178	148	1118	118	14%	15% 85%	13.8 86.8 86.8		18 98%	19%	14%	87.8	18 18 82 82 8	16%	18
e.) Those convicted of property crimes like fraud,	like fraud	theft,	and emb	embezzlement?	E 2	alah artisah terada (
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	128 % % % % % % % % % % % % % % % % % % %	144 1154 1194 504	11 11 11 13 14 14 14 14 14 14 14	22 7 8 8 8 4 9 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	17% 26% 48%	13% 15% 20% 51%	12	12 12 12 13 14 15 15 16 17 18 18 18 18 18 18 18 18 18 18 18 18 18	3.3.3.4 11.3.3.4 11.3.4 11.3.4 11.4.4	10 2 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	11 00 00 00 00 00 00 00 00 00 00 00 00 0	12%	\$ 6 T C C C C C C C C C C C C C C C C C C	1 1 5 % 2 3 % 4 7 % 1 %	11 11 14 E 80 60 41 % % % % % %	11 15 % % % % % % % % % % % % % % % % %
Top2box (Agree) Low2box (Disagree)	28%	29%	28%	32%	24%	28%	28%	29%		13%	29%	29%	22\$	298	32%	25.5%
f.) Those convicted of crimes against children?	ildren?															
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	7 0 0 0 7	\$ \$ \$ \$ \$ \$ \$	75%	11.8 81.8 22.8	401 80 40 64 1	*****	7 9 0 0	00 00 4 00 00 00 4	26 % 3 3 4 % 3 3 4 %	9 2 2 %	118	7 2 2 8 4 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	3 % % 7 3 % % 1 2 % %	11.8	\$ \$ 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	N 0 N 4 H
Top2box (Agree) Low2box (Disagree)	16%	178	178	13%	14%	15%	16%	14% 85%	548	3%	20%	15%	8 0 %	20\$	178	118

e5. Please tell me whether you personally agree or disagree that people falling into these categories SHOULD be able to vote in provincial elections?

				Region			Aware of	Aware of Lawsuit	j j	Overall Vote	Gov't Reaction	action		Joting Knowledge	lowledge	H
	Total	Calg.	Edm.	North	Central	South	X es	ON I	Agree	Dis-	Aware	Not Aware	Correct Correct Correct Correct	Jorrect	2 Correct C	orrect
Base: All respondents Weighted	800	254	276	108	8 8 4	83	552	245	192	603	111	676	36	258 254	273	233
g.) Those serving a total sentence of 10 years or	0 years o	r more?											-			
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	10% 10% 12% 67%	1118 128 678 18	11 11 94 4 4 6 6 6 8 4 4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	6% 12% 66%	13% 12% 71% 2%	11.8 12.8 67.8	10%	13 % % % % % % % % % % % % % % % % % % %	36% 16% 14%	22 * 11 2 2 3 4 4 8 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	100	100%	11.23 % 65.34 % % 55.34 % %	12%	10% 10% 68%	7 1 3 7 8 4 9 4 9 4 9 4 9 4 9 4 9 4 9 9 9 9 9 9
Top2box (Agree) Low2box (Disagree)	20\$	198	218	21%	16%	22%	19%	21%	70%	96%	25%	19%	18%	24 \$ 75 \$	21%	15%
h.) Those on parole?											-					
Strongly agree Moderately agree Moderately disagree Strongly disagree (DK/NS)	32% 45% 12% 11%	8 8 8 1 8 8 8 1 8 8 8 8 1 8 8 8 8 1 8 8 8 8 1 8 8 8 8 1 8 8 8 1 8 1 8	1 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	13 25 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	32% 458% 14%	1 4 4 1 1 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2	32% 45% 10% 2%	34 % 47 % 12 %	0 0 0 0 0 ×	21% 51% 11% 16%	0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	24 4 1 2 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	£ 4 1 1 8 2 2 4 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	36 43 11 48 11 88	33 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	27 488 111 * * *
Top2box (Agree) Low2box (Disagree)	78%	79%	75%	92%	77%	79%	77%	80%	948	72%	75%	78%	80%	79%	78%	75%
1.) Those in jail for not paying a fine?	~										-					
Strongly agree Moderately agree Sderately disagree Strongly disagree (DK/NS)	34% 27% 119% 17% 2%	32% 26% 21% 18% 3%	35. 28% 20% 15%	2004 11334 1534 264	22 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	22 2 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	33% 25% 21% 10%	3 3 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	27 2 3 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	% % % % % 0 7 2 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	3.8 2.2.8 1.8 2.1.8 3.8	35 % 19 % 17 %	25 23 % 24 % % % % % % % % % % % % % % % % %	3 2 5 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	44 119% 119% 14%	22 22 22 28 22 28
Top2box (Agree) Low2box (Disagree)	618	398	63%	29%	75 4 4 8 8	578	3.9%	328	O N N N	50%	578	62%	378	38%	0 W W W % %	40\$
										•						

				Region		Region Aware of Lawsuit Overall Vote Gov't Reaction Voting Knowledge	Aware of Lawsuit	Lawsuit	Overall Vote	1 Vote	Gov't Reaction	action	# N	Voting Knowledge	owledge	1
	Total	Calg.	Edm.	North	North Central South	Total Calg. Edm. North Central South Yes No Agree Agree Aware Aware Correct Co	Yes	ON I	Agree	Dis- Agree	Aware	Not Aware C	orrect	Not 0 1 2 3 Aware Correct Correct Correct	2 orrect Co	rrect
Base: All respondents Weighted	800	254	276	108	84	883	552	245	192	603	111	676	36	258	273	233
j.) Those who are being held in custody but have not	but have	not yet	yet gone to trial?	rial?												
Strongly agree Moderately agree	40\$		38%	30%	38%	33%	35%	40%	65%	32%	458	40%	418	39%	318	3.3%
Moderately disagree Strongly disagree (DK/NS)	13%	11%	13%	12%	178	13%	12%	14%	4 W *	12%	10%	13%	11%	118	15%	10 00 H
Top2box (Agree) Low2box (Disagree)	75\$	76\$	75%	78%	73%	69%	75%	75%	93%	69 %	81%	74%	76%	76%	73%	75%

e5. Please tell me whether you personally agree or disagree that people falling into these categories SHOULD be able to vote in provincial elections?

SUMMARY TABLE

	1	Region	18 84 84 83 81 81	Region	1		Region Aware of Lawsuit		Overal	Overall Vote Gov't Reaction	Gov't Re	action	H	Voting Knowledge	owledge	H ————————————————————————————————————
	Total Cal	Calg.		North	Edm. North Central S	South	Yes		No Agree Agree	Dis-	Not 0 Aware Correct	Not Aware C	Not 0 1 2 3 Aware Correct Correct Correct	orrect (2 Correct C	orrect
Base: All respondents Weighted	800	254	276	108	8 8 4		82 552 83 544	245	198	192 603 111 676 198 597 109 678	111	676	36 258 273 233 34 254 279 232	254	273 279	233
TOP2BOX (AGREE)																
a.) Those convicted of an offence but who have not yet begun serving their	42\$	40\$	43%	43%	37\$	43%	40%	478	86 60 84	26%	418	428	44 %	42%	45%	38
sentence b.) Those serving a total sentence of 10 days or less	\$89 	\$69	899	79%	61%	819	*99	73%	896	59%	64%	869	\$0\$	70\$	73%	63%
c.) Those serving a total sentence of less than 2 years	39%	378	418	41\$	27%	448	35\$	46%	918	218	378	39%	28%	448	408	33%
 d.) Those convicted of crimes against people like murder, manslaughter and 	14%	178	148	11%	11%	14%	15%	13%	52%	9%	19%	148	& &	18%	16%	
rape e.) Those convicted of property crimes like fraud, theft, and embezzlement	28%	29\$	28%	32\$	24\$	28\$	28\$	29%	76%	13%	29%	29%	22%	29%	32%	25%
f.) Those convicted of crimes against children	16%	178	17%	13%	14%	15%	16%	14%	54%	3%	20%	15%	œ %	20%	17%	118
g.) Those serving a total sentence of 10 years or more	20\$	19\$	21\$	21\$	16%	22\$	19%	218	10%	4 %	25%	19%	18%	24%	21%	15%
h.) Those on parole	78%	19%	75%	82%			778	808	948	72%	75%	78%	808	198	78%	75%
1.) Those in jail for not paying a fine	61%		63\$	\$69	26%	578	58%	819	958	208	578	62%	498	61%	8 E 9	58\$
1.1 Inose who are being held in custody but have not yet gone to trial	75%		75\$	78%			75%	75%	93%	*69	818	74%	76%	768	738	75\$
	_					_	_			_						

e5. Please tell me whether you personally agree or disagree that people falling into these categories SHOULD be able to vote in provincial elections?

SUMMARY TABLE

	— II	- 1	1	Region	Region	1	Aware of Lawsuit Overall Vote Gov't Reaction	Lawsuit	Overa]	Overall Vote	Gov't Reaction	eaction		Voting Knowledge	nowledge	H ————————————————————————————————————
	Total	Total Calg.	Edm.	North	North Central	9	Yes	Yes No Agree Agree	Agree	Dis-	Aware	Not	Not 0 1 2 3	Correct	Correct Correct Correct	Correct
Base: All respondents Weighted	800	254	276	108	84	833	82 552 245 192 603 83 544 253 198 597	245	192	603	111 676	676	36	258 254	36 258 273 233 34 254 279 232	233 232
LOW2BOX (DISAGREE)																
a.) Those convicted of an offence but who have not yet begun serving their sentence	\$ 95	. 56	55%	N N	61%	50%	28	51\$	10%	71\$	58%	r. r.	49%	55	528	61%
b.) Those serving a total sentence of 10 days or less	31\$	308	32\$	21\$	38%	33%	33%	26%	%	40%	368	308	398	29\$	26\$	37%
c.) Those serving a total sentence of less than 2 years	\$09	63%	578	578	\$69	55%	63%	548	7%	778	62\$	809	598	55%	\$65	\$99
d.) Those convicted of crimes against people like murder, manslaughter and	85%	83%	85%	80 80	80 80 %	86%	858	86%	46\$	\$86	81%	86%	87%	82%	84%	*06
tape e.) Those convicted of property crimes like fraud. theft. and embezzlement	70%	70\$	718	\$89	748	72%	718	10%	23%	86%	869	70%	72\$	70\$	68%	74%
f.) Those convicted of crimes against children	83\$	82%	82%	85.8	898	80.5%	83%	828	45\$	896	80	84%	80%	798	83%	868
g.) Those serving a total sentence of 10 years or more	198	79%	78%	78%	83%	78%	808	78%	29%	\$96	74%	808	16%	75%	78%	85%
1.) Those on parole	218	398	24%	18%	22%	19%	39%	32%	n n	26%	23%	21%	12%	38%	21%	24%
j.) incose who are being held in custody but have not yet gone to trial	23%		22%	21%	26%	278		23%		28%	18%	23%		218	25%	24%

e7a. As you may or may not be aware, prior to the last provincial election a law was in place banning all prisoners from voting. Since then, two prisoners filed a lawsuit suggesting that the Alberta election law was unconstitutional. The Alberta Court of Appeal ruted on this lawsuit in April of this year, saying that parts of Alberta's election law are unconstitutional because it denies ALL prisoners serving a sentence on Election Day the right to vote. The court ruled that some prisoners have a constitutional right to vote. Have you personally seen, heard or read anything about the Alberta Government's reaction to the Court of Appeals decision?

e7b. What did you see, hear or read about the Alberta Government's reaction?

			DD 193 BB 05 BB 06 BB 07 BB 08	Region			Aware of	Lawsuit	Overal	Overall Vote	Gov't Re	Reaction	=====	Voting Knowledge	 owledge	» —
	Total	Total Calg.	Edm. North	North	North Central	South	Yes	No	Agree	Dis- Agree	Aware	Not Aware C	Not 0 1 1 ware Correct Correct		Correct C	Correct Correct
Base: All respondents Weighted	800	254	276	108	8 8 4	82	552	245	192	603	3 111 7	676	36	258	273	233 232
e7a. Have you personally seen, heard or read anything	read anyt	thing about	the	 berta G	Alberta Government's		reaction to t	the Court of	of Appea	Appeals decision?	ion?					
Yes No (DK/NS)	14% 85% 2%	16%	128	13% 86% 1%	108	19%	178 818 28	93%	13% 85%	14% 85% 2%	100%	100%	0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	85% 1%	18808	90%
7b. What did you see, hear or read about the Alberta Base: Aware of Government's reaction to 111 the decision	the Albe	erta Gover	rnment's	reaction?	9 -	17	96	15	28	82	111	,	7	36	52	21
Weighted	109	38	32	15	6	15	94	15	27	81	109	'	2	35	51	20
They did not like the ruling They're going to challenge the decision	~~~	15\$	28%	39%	20 00	30%	24%	21%	268	23%	24%	, ,	1008	29%	25%	14%
It will be allowed/ they will go on with			1	1	*60	**	ν. %	8	ب چو	ψ.	₩.	+	,	- W	, , o	, m
Under limited circumstances they are allowed to vote		n %	1	1	15%	'	a)0	16%	ω %	3%	m m	,	'	₩ ₩	%	1
view			₩ (F)	rU %	'	'	₩ ₩	N %	,	2%	2%	1	,	₩	**	1
Set Leedback from citizens/ referendum	500		. :	1	'	4.8	2%	•	E)	% 	2.8	,	,	,	1 %	5.8
Other	7 1		m) (1	1 0	1	% °	, ;	, ;		de .	,	,	3%	,	<u> </u>
(DK/NS)	, a	104 204	7 0 %	1 10		1 7 7	, o	% o .	4, T	*80 (No 6	1	'	4. i	₩ ₩	10%
		_	- -	302	202	4, 4,	388	30.0	35%	378	38%	'	-	43%	38%	31%

The Angus Reid Group, Inc.

ega. In April of this year, the Government of Alberta announced it will be introducing amendments to the province's voting law in keeping with the views of the Appeals Court. Under this proposal, Alberta will continue to ban prisoner voting in Provincial elections with

				Region		-	Aware of Lawsuit Overall Vote Gov't Reaction	Lawsuit	Overal	1 Vote	Gov't Re	eaction	>	Voting Knowledge	owledge	Region Aware of Lawsuit Overall Vote Gov't Reaction Voting Knowledge
	Total Cal	Calg.	Edm.	North	Edm. North Central South	South	g. Edm. North Central South Yes No Agree Ayare Aware Correct Correct	N	Agree	No Agree Agree Aware Aware Correct Correct Correct	Aware	Not Aware C	orrect C	orrect C	2 2 orrect C	3 Correct
Base: All respondents Weighted	800	254	276	108	80	82	552	245	192	603	111	929	36	258	273	233
	3	CF7	2		# D	0	# # 0	253	198	760	601	8/9	34	254	279	232
Goes too far, that is, lets too many prisoners vote	18%	18%	178	178	198	23%	19%	16%	3%	23%	248	17%	ru %	20%	13%	24%
Doesn't go far enough, that is, doesn't let enough prisoners vote	19%	21\$	20%	13%	23%	15%	19%	19%	809	% 9	27%	18%	16%	22\$	228	13%
Is about right	62%	\$09	62\$	70%	58%	\$65	61%	648			498	64%	71%	57%	65%	63%
(DK/NS)	1%	1%	1%	-	'	3%	1%	1%	1 %	1%	,	18	8 %	1%	*	**

			91 B 10 B 28 B 60 B 60 B	Region			Aware of Lawsuit	are of Lawsuit Overall Vote Gov't Reaction	Overal	Overall Vote	Gov't Reaction	action	51 11 11 12 15 16 16	Voting Knowledge	owledge.	
	Total Cal		Edm.	North	North Central South	South	uth Yes No Agree Agree	0 N	Agree	Dis-	Aware Aware C	Not Aware	==== 0 orre	orrect (ct Correct Correct C	orrect
	17 55 61 61 61 61 61 62 63 64 64 64		# # # # # # # #	# # # # # #	11 15 16 16 16 16 16 16 16 16 16 16 16 16 16	8 8 8 8 8 8 8 8 8 8	经存款分别 计多线性 医多种性 医多种性 化二甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基	11 11 11 11 11 11		87 81 81 81 81 81 81 81	11 11 11 11 11 11	81 91 91 91 91 91 91 81	11 12 12 14 14 14 14 14 14 14 14 14 14 14 14 14	H H H H H H H H H H H H H H H H H H H	11	H H H H H H H H H H H H H H H H H H H
Base: Feel proposal doesn't go too far	148	53	54	13	16	12	105	43	115	32	32	115	9	55	65	28
Weighted	153	52	54	15	19	13	105	48	118	33	29	122	9	57	09	30
They should be allowed to vote/	54%	56%	61%	63%	33%	378	53%	568	68%	%	84	7. 7.	24		- 4	44%
everybody has the right Depends on the severity of the crime	78	*61	Д	24.8			0	9	ř	9	6					
Severity of crime makes no difference	2	2 24)	10%			4 C	102	1.6	24.0	1361	1 0 A	348	20%	20%	*6
Only those convicted should lose their	200) I	4.	P 1	9 %		2 6 %	ر ا ا		7 02	,	2, c	,	~) %	~ ~ ~	4, L
right to vote						_			1			ກໍ		'	9	(0
with the second tether their	20	'	₩.	1	9	,	3%	,	1%	78	,	3%	'	,	2%	78
convicted they should have the right																
I agree/ seems fair	18	3.5	,	1	,	,	2%	•	1%	3,0	,	940	'	,	'	- H
No reason	1%	,	2%	•	1	,	1.8	'	'	36	8		,	1	1	
Other	178	168	178	50	21%	.,	16%	178	12\$	33%	20%	16%	14%	14%	18%	19%
(DK/NS)	78	2%	4%	80			89	96	3%	19%	10%	9%	278	28	\$6	7.8

	- 1	Gender	Gender		Age	_	Gender Age Education Income	Education	-		Inc	Income	
	Total	Male	Female 18-34	18-34	Total Male Female 18-34 35-54 55+ Less Sec. Univ.+ < 25K \$40K \$60K \$60K+	55+	HS or Less	Post Sec.	HS or Post	< 25K	\$25K- \$40K	\$40K- \$60K	\$60K+
Base: Feel proposal is about right Weighted	497	238	259	153	225	113	124	202	104	119	78	108	176
Depends on the severity of the crime Only those convicted should lose their right to vote/ If they haven't been	50\$	16%	53%	18%	478	50%	14%	48%	118	53%	62%	51\$ 15\$	45%
convicted they should have the right It shouldn't apply to those who can't afford the fine	11%	10%	12\$	118	12\$	10%	118	13\$	4	12%	∞	80 %	15%
nly those convicted should lose their out to vote	7.8	78	7.8	78	\$ 8	4,	3%	96	96	5.	%9	78	9
They should be allowed to vote/ everybody has the right	78	78	99	*9	5.8	10%	ηυ Ψο	96	9	11\$	3,	ιυ %	96
ney should not be allowed/ lost right con crime	2*	*	4.8		4 %	2%	1%	2%	3%	2%	2%	د ۳۰	25
everity of crime makes no difference		3%	*	,	3%	1 %	4 %	1				,	
agree/ seems fair	15%	16%	148	15%	16%	15%	12%	15%	278	12%	80	г	178
No reason	1%	1%	**	•	1%	2%	1%	1.8					
Other	99	5%	78	*9	5%	% 60	78	7%				118	5
(DK/NS)	*6	11%	90	10%	96	7%	80	80					

			1 1	Region		11 1	Aware of Lawsuit	Aware of Lawsuit	Overal	Overall Vote	Gov't	eaction	# # # # #	Voting Knowledge	owledge	
	Total Ca	Calg.	Edm.	North	-	1 2	South Yes No Agree Agree	ON	Agree	Dis-	Aware	Not Aware Cor	rect	1 2 Correct Correct	2 Correct C	3 orrect
Base: Feel proposal is about right	497	153	172	74	64	49	335	160	70	425	54	436	25	148	148 176	ti .
500000000000000000000000000000000000000			7/7				331	163	72	421	23	435	25	144	180	146
Depends on the severity of the crime Only those convicted should lose their	50%	49%	47%	61%	4 80 80 80 80 80 80	53%	52%	478	35%	10 to	\$50.	50%	49%	45%	53%	53%
right to vote/ If they haven't been convicted they should have the right	-) 	9	· ·	9	804	\$ 0 T	\$2.4	7 P	 *0 T	14%
It shouldn't apply to those who can't afford the fine	11\$	10%	10%	16%	80	11\$	10%	12%	7.8	12%	16\$	10%	7%	11%	10%	12%
Only those convicted should lose their right to vote	78	80 80	ru %	E)	ν. γ.	19%	3.6	10%	86	99	10%	\$9	3%	7%	78	9
They should be allowed to vote/ everybody has the right	78	9	9	80	13%	,	9	7%	21\$	%	2%	7%	15%	τ∪ %	9	
They should not be allowed/ lost right upon crime	2 %	1%	2%	2%	ν. Ψ	18	2%	23	,	2%	₩ %	2 %	1	₩ H	2.8	3%
Severity of crime makes no difference	2%			2%		,		29%	'	2%	'	2	'	6/4	4	,
I agree/ seems fair	15%	16%	22\$	8	80	10%	16%	13%	19%	15%	16%	15%	13%	18%	13%	16%
No reason				•			1%	1%	1%	1%	2%	-1	,	1%	,	7%
Ocher (mm/mm)	9			9		10%	%	96	88	6%	78	89	%	90	50	30
(DK/NS)	- 9%	* 60		36			88	12%	89	10%	50%	10%	12%	13%	88	9

Base: All respondents Weighted

Gender Male Female

18-24 25-34 35-44 45-54 55-64 65+ DK/NS

Age

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Total Calg. Edm. North Central South Yes No Agree Agree
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89. Edm. North 54 276 108 50\$ 50\$ 50\$ 50\$ 50\$ 50\$ 50\$ 50\$ 50\$ 50\$

z31. Which of the following describes the population of the town or city in which you live?

		H H H H H H H	11 24 21 21 21	Region	11 11 11 11 11 11	II	Aware of Lawsuit	Lawsuit	Overal	Overall Vote	Gov't R	eaction		Voting Knowledge	owledge	
	Total Ca	Calg.	Edm.	North	North Central South	South	lg. Edm. North Central South Yes	No	Agree	Agree Agree	1 16	Aware Aware 0	Correc	Not 0 1 2 3 Aware Correct Correct Correct	orrect C	orrect
Base: All respondents	008	254	276	108	80	82	552	245	192	603	111	676	36	258	273	233
Weighted	008	243	276	114	84	83	544	253	198	597	109	678	34	254	279	232
Under 1,000	10\$	4 %	%	18%	24%		10%	86			11 %	10%	10%	9%	4	**
1,000 - 10,000	19%	9	36	478	418		18%	22\$	13%		10%	20%	18%	20%	16%	20%
10,000 - 50,000	14%	20	14%	318	148		14%	14%			18\$	13%	88	14%	18%	*6
50,000 - 250,000	*6	%	% %	•	208	248	88	118		98	14%	9%	3%	86	10%	00
Over 250,000	478	84%	62%	38	1%		20%	418	468		45%	48\$	528	50%	418	52%
(DK/NS)	2%	1%	3%	1%	,	2%	1%	3%			3%	1%	10%	1%	1%	2%

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Total Calg. Edm. North Central South Yes No Agree Agree Agree Agree Agree Agree Agree Agree Correct Corr
Overall Vote Gov't Reaction Voting K Agree Aware Aware Correct Correct 192 603 111 676 36 25 194 597 109 678 36 25 174 244 214 254 27 174 154 114 164 174 175 154 154 174 254 178 154 154 164 164 178 154 154 164 164 18 154 154 164 164 19 154 154 164 164 19 154 154 164 164 19 154 154 164 164 6 16 16 164 164 7 16 16 16 164 19 154 154 16 16 10 16 16
Gov't Reaction Voting K Modre Aware Correct
Region North Central South Yes No Agree Agree Aware Aware Correct Correc
Voting K Vot

24. What one category best describes your current marital status?

			11	Region	B: 81 81 81 91 82 92 93 93 95 94 95 94 95 94 95		Aware of Lawsuit Overall Vote Gov't Reaction	Lawsuit	Overal	1 Vote	Gov't Reaction	eaction		action Voting Knowledge	owledge	
	Total Ca	Calg.	Edm.	North	Central	South	Edm. North Central South Yes No Agree Aware Aware Correct Correct	No "	Agree	Dis- Agree	Aware	Not Aware (Oorrect C	Correct Correct Correct Correct	orrect	3 orrect
Base: All respondents Weighted	800	254	276	108	80	83	552	245	192	603	111	676	36	258	273	233
Single Married or co-habitating Divorced/widowed/separated (DK/NS)	24% 63% 12%	29%	21\$ 62\$ 15\$	20\$ 75\$	178 698 148	27% 63% 10%	20% 65% 14%	00 H	32%	21% 66% 12% 11%	148 728 118	268	188%	22% 65% 12%	248	25% 63% 12%

			Region			Region Aware of Lawsuit Overall Vote Gov't Reaction Voting Knowledge	Aware of Lawsuit	Overal	Overall Vote	Gov't Reaction	eaction		Voting Knowledge	owledge	11
Total	Calg.	Edm.	North	North Central	South	Total Calg. Edm. North Central South Yes No Agree Agree Aware Correct Correct	No	Agree	Dis-	Aware	Not Aware	Orrect C	O 1 2 3 Correct Correct	orrect C	orrect
	## ## ## ## ## ## ##	81 60 10 11 11 11	81 81 81 81 81 81 81 81	#1 #1 #1 #1 #1 #1 #1	# # # # # #					H H H H H	H H H H H H H H H H H H H H H H H H H		# # # # # # # # # # # # # # # # # # #	H H H H H H H H H H H H H H H H H H H	## ## ## ## ## ## ## ## ## ## ## ## ##
800	254	276	108	80	82	552	245	192	603	111	676	36	258	1 575	1
800	243	276	114	84	83	544	253	198	265	109	678	34	254	279	232
16%	19%	16%		198	36	16%			178	148	178	208	92.1	100	7
33%					398	338			33%		36	378	0 00	20.01	- AU - P
18\$					178	19%			188		10%	20%	21%	1 4 9	000
20%	18%	21%	20\$	248	16%	20\$	19%	20%	198		188	118	22%	20%	100
90 %					118	78			78	3%		3%	10%	**	0 00
4.					78	48			4 %			4.8	48	- 10 - 20) (m)
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1%	2%	2.8	,	'	•	18	1.8		1.8	3%	18	75	18	30	**
2.8	2.7	2.8	3.1	2.8	3.1	2.8	2.9	2.9	2.8	2.9	00	- 2		α .	
1.4	1.3	1.3	1.4	1.5	1.6	1.4	1.5	1.4	1.4	1.4	4.1		4 4	0.4	
*	0.1	0.1	0.1	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.1	0.1	0.1
														-	-

Base: All respondents Weighted

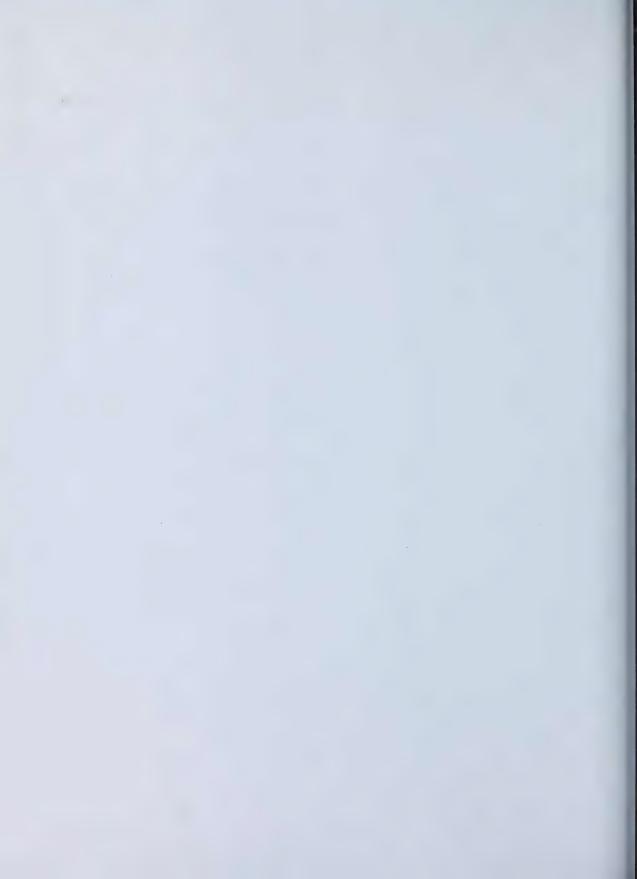
MEAN STD DEV STD ERR

One Two Three Four Five Six Seven Eight Nine (DK/NS)

27. Which of the following categories best describes the total amount income, before taxes, of all members of your household combined?

 $z\,8$. And is there one sole income earner in the household, or are there two or more income earners?

				Region		_	Aware of Lawsuit	Lawsuit	Overa	Overall Vote	Aware of Lawsuit Overall Vote Gov't Reaction	Reaction		Voting Knowledg	Voting Knowledge	
	Total	Calg.	Edm.	North	North Central	South	Yes No Agree Agree Aware Aware Correct Correct Correct Correct	N N	Agree	Dis-	Aware	Not	Not 0 1 2 3 Aware Correct Correct Correct	Correct	Correct	Correct
Base: All respondents	800 254	254	ji	Ħ	80	82	80 82 552 245 192 603 111 676 187 188	245	192	603	111	676	196	258	273	233
Weighted	800	243	276	114	84	83	544	253	198	597	109	678	34	254	279	232
Income																
Less than \$15,000	*9	44	89	9			90	7%								,
\$15,000 to \$24,999	10%	78	78	15%	11%	23%	86	118	12%	. 60	. 9	10%	20%	. 40		0
\$25,000 to \$39,999	188	178	18%	16%	_		198	168	_							180
\$40,000 to \$59,999	208	20%	238	148			218	198	_	_		_				22
\$60,000 to \$79,999	15%	16%	15%	19\$	_		148	16%	_							7 -
\$80,000 to \$99,999	*8	8 %	78	15%			80	80	_	_						1 00
\$100,000 and over	10\$	148	10%	99	_		10%	10%					_			11
(DK/NS)	128	148	148	00 %			12%	12%								12%
Income earners	-															
One	378	35%	38%	35%				38%						31%		41
Two+ (DK/NS)	809	62%	100	63%	49%	849	\$09	809	989	58%	62%	809	43%	64%	\$09	578



SUMMARY OF SUBMISSIONS TO MLA COMMITTEE MAKING RECOMMENDATIONS ON RESTRICTIONS ON PRISONER VOTING IN THE ALBERTA ELECTION ACT

1

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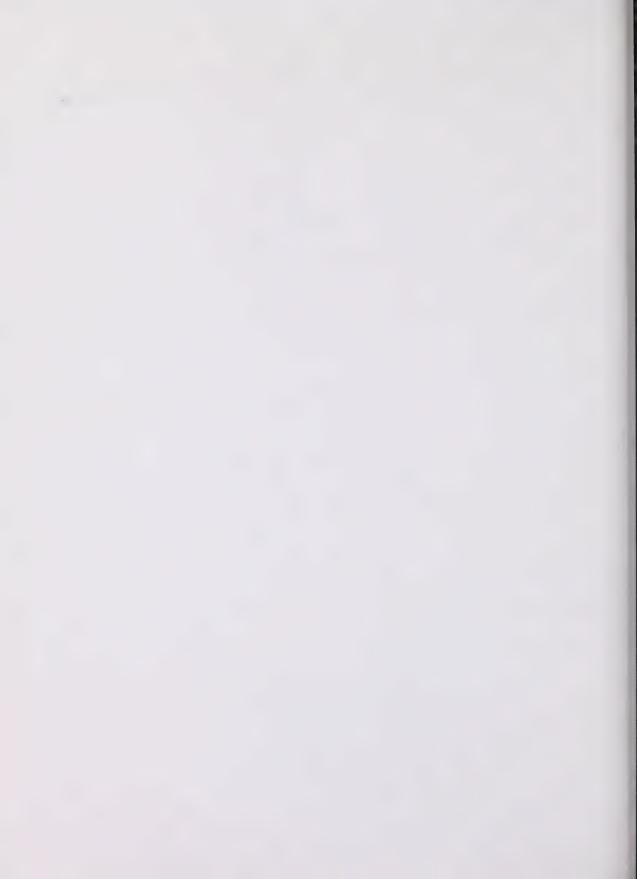
105

E-mail	
Opposed to prisoner voting	65
Supportive of prisoner voting	8
Supportive of limited prisoner voting	
For non-payment of fines	1
If rights must be given, extremely limited	3
Only if will be released within three months	
from election	1
If sentence is less than two years or remanded	1
If arrested but not convicted	2
Total Faxes	81
Opposed to prisoner voting	95
Supportive of prisoner voting	2
Supportive of limited prisoner voting	
In very limited circumstances	1
Conscientious objectors	1
Serving two weeks or less	2
Awaiting trial	1
Cannabis offences	1
Because CA has forced us only non-violent	

and lesser sentences

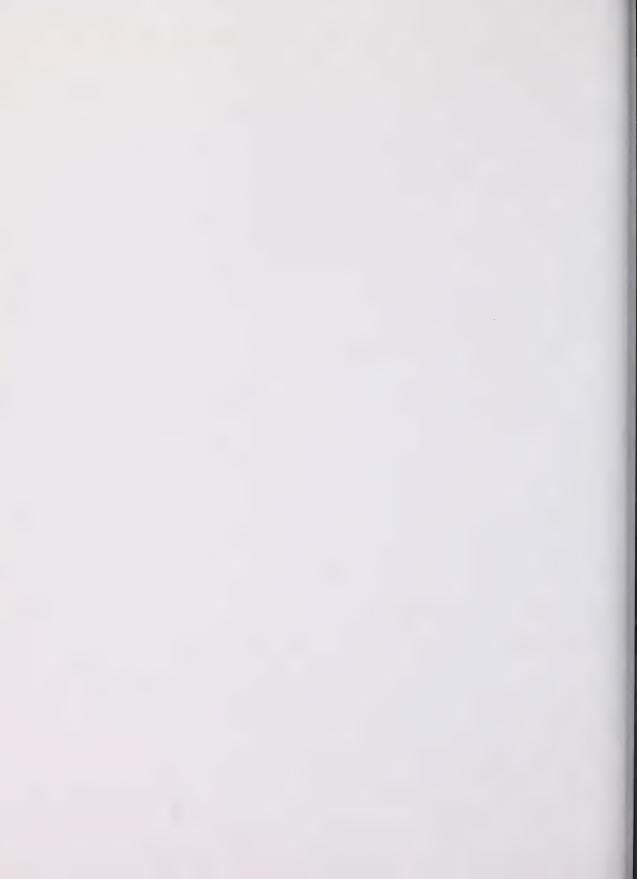
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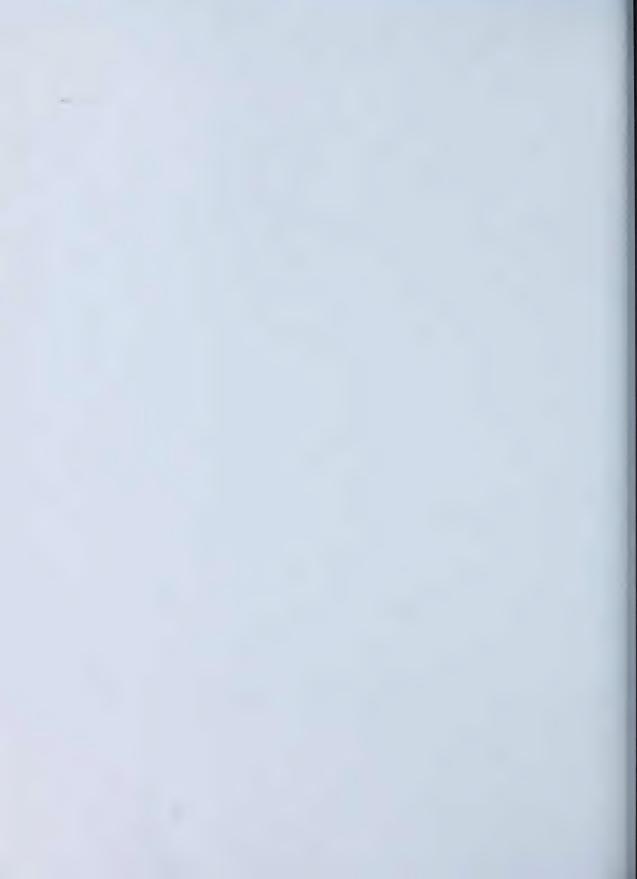
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Telephone Calls

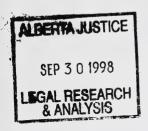
Opposed to prisoner voting	82
Supportive of prisoner voting	3
Supportive of limited prisoner voting	
Just before they go out on parole	1
If have voted before	1
Until convicted	1
Total	88
N. 1	
Mail	
Opposed to prisoner voting	72
Supportive of prisoner voting	10
Supportive of limited prisoner voting	
Because CA forced us, very limited only	183
10 day sentences or less	1
Awaiting trial	1
All except most serious crimes	1
Could not comment	3
Total	271
Total Submissions	545
Total Opposed to All Prisoners Voting	314
Total Opposed to Most Prisoners Voting	204
Total Supportive of Prisoner Voting	22
Could not comment	4





LIBERAL DEMOCRACY AND INMATES' VOTING RIGHTS

A Reflection on Possible Amendments to the Alberta Election Act



Christopher P. Manfredi, Ph.D.
Professor
Department of Political Science
McGill University

Liberal Democracy and Inmates' Voting Rights

Is it consistent with the theory and practice of a liberal democratic state committed to the rule of law to suspend the right to vote of prison inmates? This question engages one of the most important concerns of professional analysts of liberal democracy, since it involves identifying the proper balance between individual political participation rights and the common good of preserving the integrity of the democratic process and the electoral system on which it depends.

In my opinion, the following propositions are true:

- 1. Liberal democratic theory and practice permit the establishment of limits on the right to vote.
- 2. Liberal democratic regimes may use public law to promote norms of civic virtue and respect for the rule of law.
- 3. Restrictions on the right to vote of correctional institution inmates promote civic virtue and respect for the rule of law by educating the general population about the requirements of good citizenship.
- 4. Education in the requirements of good citizenship is an integral component of policies that preserve respect for the rule of law and promote the integrity of the democratic process.
- 5. Granting inmates the right to vote would reduce the value of the franchise, undermine the integrity of the democratic process, and encourage disrespect for the rule of law.

These propositions lead to the general conclusion that restrictions on the right to vote of prison inmates may legitimately be characterized as a necessary *safeguard* of the right to vote protected by section 3 of the Canadian Charter of Rights and Freedoms rather than as an interference with, or limit on, that right.

Liberal Citizenship and the Right to Vote

Access to the political process, of which the right to vote is the most obvious element, is one of the fundamental principles of liberal democracy. importance is evident in the fact that both American and Canadian scholars have constructed entire theories of constitutionalism around it.² Section 3 of the Canadian Charter of Rights and Freedoms provides that "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." Americans have also recognized the primacy of the right to vote. For example, James Madison recognized that the "definition of the right of suffrage is very justly regarded as a fundamental article of republican government."³ and the United States Constitution deals extensively with voting. Article I of the U.S. Constitution provides that anyone qualified to vote in elections for the most numerous branch of the state legislature must also be qualified to vote in elections for the House of Representatives. Over time, the U.S. has amended its national constitution to prohibit restrictions on the franchise based on race (Fifteenth Amendment), gender (Nineteenth Amendment), and the ability to pay poll taxes (Twenty-Fourth Amendment), as well as to set eighteen as the minimum national voting age (Twenty-Sixth

¹. John Stuart Mill, *Considerations on Representative Government* (London: Longmans, Green and Co., 1926 [1861]), 67-68; John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 222-23

². John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge: Harvard University Press, 1980); Patrick Monahan, *Politics and the Constitution: The Charter, Federalism, and the Supreme Court of Canada* (Toronto: Carswell/Methuen, 1987).

³. Madison, *The Federalist Papers*, No. 52, 326.

Amendment).⁴ The *Voting Rights Act* of 1965 further limited the power of States to interfere with the exercise of the franchise.⁵ Nevertheless, the U.S. Constitution does not define the right to vote in any affirmative sense; instead, it merely enumerates a list of impermissible restrictions on that right.⁶

Section 3 of the Canadian Charter of Rights and Freedoms is less universalistic than other rights protected under the Charter. More specifically, it is one of only three provisions that apply exclusively to citizens. Thus, while anyone within the legal jurisdiction of Canada may claim the protections offered by the Charter's fundamental freedoms, legal rights, and equality rights, only those individuals who are also citizens may claim the right to vote. Indeed, the current practices of many liberal democracies reflect the reality that, however universal the right to vote may be in abstract terms, it derives its effective meaning from the *particular* context of its exercise within specific regimes. In other words, the abstract commitment to voting rights has concrete value only in the context of a specific set of rules governing the exercise of the right.

In addition to citizenship, the most common restrictions on the right to vote are age and residency requirements. The European Commission on Human Rights, for example, has upheld restrictions on the right to vote of non-resident citizens. Neither is

⁴. Laurence Tribe, *American Constitutional Law* (Mineola, NY: Foundation Press, 1978), p. 763.

⁵. 42 U.S.C. s. 1971 (1965).

^{6.} David M. O'Brien, Constitutional Law and Politics, Volume I: Struggles for Power and Government Accountability (New York: W.W. Norton, 1991), 654.

⁷. The others are ss. 6(1)(mobility rights) and 23 (minority language education rights).

⁸. Guy S. Goodwin-Gill, *Free and Fair Elections: International Law and Practice* (Geneva: Inter-Parliamentary Union, 1994), 42-46.

^o. *Ibid.*, 43. Citing European Commission on Human Rights, Application 7566/76, 9 *Decisions and Reports* 121.

it uncommon for countries to restrict the voting rights of military personnel or of individuals suffering from mental disabilities. Moreover, Canada and the United States are not alone in disenfranchising individuals convicted of criminal offences. Indeed, the European Commission on Human Rights has upheld the basic legitimacy of disenfranchising inmates.¹⁰ Under the general principles of international law, such voting restrictions are permissible unless "used as a device to disenfranchise significant sections of the population."¹¹

The American constitutional scholar, Laurence Tribe, agrees that liberal democratic states are not required to "confer the franchise on all who aspire to it" because "completely unlimited voting could subvert the ideal of popular rule which democracy so ardently embraces.¹² In particular, according to Tribe, any "community should be empowered to exclude from its elections persons with no real nexus to the community as such," since "in deciding who may and who may not vote in its elections, a community takes a crucial step in defining its identity." Tribe's analysis helps to explain why citizenship is a necessary minimum condition for voting, since citizenship is the most common indicator of full membership in a particular political community. It also

^{10.} Ibid., 44 n.84. Citing European Commission on Human Rights, Application 2728/66, 25 Collection of Decisions 38; European Commission on Human Rights, Application 4984/71, 43 Collection of Decisions 28.

^{11 .} Ibid., 45.

Tribe, *American Constitutional Law*, 761 (emphasis added). One should note that Tribe's own view is that inmate disenfranchisement is inconsistent with the Fourteenth Amendment to the U.S. Constitution. That is not the view of the U.S. Supreme Court, however. See *Richardson v. Ramirez*, 418 U.S. 24 (1974). In this case, the U.S. Court upheld broad state authority to disenfranchise convicted persons. It also allowed states to continue the disenfranchisement after the completion of prison sentences.

^{13.} *Ibid*. Emphasis added.

explains why citizenship is frequently insufficient on its own to provide access to the franchise. In particular, the link between voting rights and a "nexus to the community" explains why residency is a common additional prerequisite to the right to vote.

However, Tribe's analysis does not explain why restrictions such as age and mental competency are also common in liberal democracies. To be sure, such restrictions (especially the second) are related to the cognitive capacity to exercise the franchise effectively, but this does not provide a complete explanation of them. In particular, cognitive capacity does not fully explain why older adolescents (e.g. those over the age of eleven) are denied the right to vote, especially since the law generally recognizes them as cognitively capable of forming criminal intent. The question that Tribe's analysis raises, therefore, is whether membership in a political community has a normative component in addition to its purely procedural elements.

To classical theorists like Aristotle, the answer to this question was obvious, since the establishment of a political regime, "constituted in accordance with strict principles of justice," required morally virtuous citizens who would rule for the common good rather than to advance their own self-interest. ¹⁴ Consequently, the capacity for moral virtue was a prerequisite for the right to participate in political deliberation and decision making. Only those with this capacity, therefore, could be admitted to citizenship, which meant that citizenship alone could be both a necessary *and* sufficient condition for participation in the public realm of politics. Although every citizen could participate in politics, citizenship was not a universal category: classes of individuals--for example, children, women, labourers and slaves--were excluded from citizenship because of their (assumed) natural incapacity for the level of moral virtue necessary for political participation. ¹⁵

¹⁴. Aristotle, *Politics*, 1279a15; 1277a1.

^{15 .} Aristotle, Politics, 1278a1-a20.

The relationship between citizenship and virtue is far more complicated for liberal democracies rooted in the modern political theory of natural equality. A liberal democratic state celebrates the rule of law, which ensures the civil and political rights of individuals and the equal dignity of all. On the one hand, liberal theory generally prefers to rely on structural constraints (e.g. representative and responsible government, judicial independence) to limit the governors rather than the moral virtue of leaders to guarantee that rulers govern for the public good. On the other hand, liberal theorists like Locke, Mill, Madison and Rawls have articulated the importance of at least some minimal level of civic virtue among citizens. For example, Madison argued that the "aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society." Similarly, Mill recognized that "the virtue and intelligence of the human beings composing the community" is the "first element of good government." Writing more recently, Rawls has argued that "a just constitution must rely to some extent on citizens

The modern doctrine of "natural equality" means that no individual has an inherent right to rule over another. To the contrary, the right to govern is derived from the consent of the governed.

The most famous articulation of this point is by James Madison in *Federalist* No. 51. "If men were angels," Madison argued, "no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." Madison, *The Federalist Papers*, No. 51, p. 322.

¹⁸. *Ibid.*, No. 57, p.350.

¹⁹. Mill, Considerations on Representative Government, 12.

and legislators adopting a wider view and exercising good judgment in applying the principles of justice."²⁰

The recognition that, even in liberal democracies, citizens must possess an "effective sense of justice,"²¹ leads to the conclusion that liberal democratic regimes must be concerned with cultivating a "civilized and knowledgeable society."²² Indeed, in order for a just social and political system to function properly in the context of equal political liberty, its members must be confident that "everyone accepts and knows that the others accept the same principle of justice."²³ For Madison, good government not only required good rulers, but also a certain level of virtue among citizens.²⁴ Writing almost a century later, Mill made the same point: the qualities of good government are directly dependent on "the qualities of the human beings composing the society over which the government is exercised."²⁵ To this end, Mill advocated the establishment of universal public education, as well as the public celebration of acts of "morality and good conscience," to "educate the moral sentiments of the community".²⁶ As Rawls put it, "moral sentiments are necessary to insure that the basic structure is stable with respect to justice."²⁷ Twentieth-century liberalism may limit the range of tools that states can legitimately use to shape their citizens' character, but it does not alter the basic truth that "governing is

²⁰. Rawls, A Theory of Justice, 360.

²¹. *Ibid.*, 336.

Tocqueville, *Democracy in America*, I:208.

Rawls, A Theory of Justice, 453-54.

Madison, *The Federalist Papers*, No. 55, 346.

²⁵. Mill, Considerations on Representative Government, 11.

²⁶. *Ibid.*, 68, 10.

^{27.} Rawls, A Theory of Justice, 458.

about character formation."²⁸ Liberal democracy, in other words, requires the development of a degree of civic virtue consistent with a political regime founded on self-government and the universality of citizenship.

The liberal principle of universal citizenship means that there can be no obstacles to citizenship that would permanently exclude classes of individuals from exercising the political rights associated with citizenship. Consequently, as part of their general concern with civic virtue, liberal regimes may impose restrictions on the right to vote provided that those restrictions satisfy two conditions. First, since the potential for moral or civic virtue cannot be a prerequisite for citizenship itself, liberal democracies must view the right to vote as presumptive. In practice, this means that restrictions on the right may not take the form of positive tests in which citizens bear the burden of proving that they deserve to exercise the franchise. Under this condition, devices such as literacy tests would be prohibited. The second condition is that voting restrictions must be universal, in the sense that, in principle, every citizen could be subjected to them.²⁹ Age restrictions satisfy this condition, since in the normal course of life they affect everyone equally (although obviously not simultaneously). By contrast, gender- or race-based restrictions would be inconsistent with this condition.

Restrictions on the right to vote of prison inmates, particularly as they apply to prisoners serving more than a very short sentence, are consistent with these principles. First, they do not require that individuals prove in any positive way that they possess liberal democratic civic virtue. Instead, they merely recognize that the criminal conduct which leads to imprisonment indicates a lack of civic virtue and respect for the rule of law that are inconsistent with exercising the right to vote. Second, such restrictions would apply to voluntary conduct regardless of ascriptive characteristics like race,

²⁸. James Q. Wilson, *The Moral Sense* (New York: The Free Press, 1993), 248.

²⁹. Rawls, A Theory of Justice, 224.

national or ethnic origin, colour, religion, sex, age or mental or physical disability. In principle, then, there is no conflict between the voting restrictions on prison inmates and liberal democratic norms.

Civic Virtue and Inmate Disenfranchisement

Although citizenship constitutes the principal element of membership in a political community, it is not the only criterion considered relevant in determining whether an individual's "nexus to the community" is sufficient to provide full access to political rights, including the right to vote. The additional criteria commonly used by liberal democracies reflect a variety of concerns, ranging from the practical to the educative. At the more practical end of the spectrum, one finds voting restrictions based on residency, which reflect the concern that voters have a relatively direct stake in election outcomes. Age restrictions are based on practical concerns about cognitive capacity, as well as on the capacity for *responsible* exercise of the franchise. Finally, restrictions placed on specific officials, such as judges and electoral officials, reflect normative concerns about maintaining the symbolic and actual distinction between independent public functions, as well as the integrity of the electoral and judicial process.

In this respect, the objectives of inmate voting restrictions are situated toward the educative end of this spectrum. This is neither undesirable nor surprising, and does not make them inappropriate goals in a liberal democratic state. What matters most is the inherent importance of the objectives underlying the restriction, regardless of where it falls along the practical--educative spectrum. Indeed, educative and practical concerns equally animate the objectives of inmate voting restrictions. Moreover, these concerns, rather than being mutually exclusive, are related in the sense that inmate voting restrictions link practical concerns about membership in the political community to educative concerns about promoting respect for the rule of law and developing at least a minimum level of civic virtue.

The principal objective that the inmate voting restriction serves in a free and democratic society, therefore, is to protect the integrity of liberal democracy by preserving and promoting the rule of law and the civic virtues on which a regime based on equal political liberty depends. The restriction serves this objective by suspending the right to vote of individuals who have manifestly demonstrated their disrespect for the rule of law and their lack of those virtues. It simultaneously reinforces the principle that citizenship entails responsibilities and duties as well as rights and privileges.

How does the restriction promote the rule of law which underlies the integrity of the democratic process? The answer to this question lies in the type of character that liberal democratic regimes must cultivate in order to ensure their preservation. In general terms, these regimes require that their citizens be public-spirited and future-oriented, which means that liberal democracy cultivate both empathy and self-control among its citizens.³⁰ These traits are important, as John Rawls argues, because participation in political life requires that citizens weigh interests other than their own when deliberating on public issues, and that they be guided in those deliberations by conceptions of justice and the common good rather than merely by their own immediate self-interest or gratification.³¹

[&]quot;Empathy," according to James Q. Wilson, is "a willingness to take importantly into account the rights, needs, and feelings of others. Self-control refers to a willingness to take importantly into account the more distant consequences of present actions." James Q. Wilson, *On Character* (Washington, D.C.: AEI Press, 1991), 5.

Rawls, *A Theory of Justice*, 234. The relationship between these negative character traits and serious and/or persistent criminal behaviour is well-documented in the literature on criminal behaviour. Indeed, most studies of the personality dimensions of criminal behaviour have produced consistent findings: criminal behaviour is closely associated with (1) rapid time discounting; (2) minimal internal verbal mediation; and (3) shallowly ingrained standards of behaviour [See James Q. Wilson and Richard J.

At this point, one might raise two objections to the inmate voting restriction as a test for civic virtue. On the one hand, the restriction may be overbroad because innocent persons may have been unjustly convicted. On the other hand, the restriction may be underinclusive by leaving intact the voting rights of persons whose criminal conduct has not been identified, or who have avoided imprisonment. In more technical terms, as a test for liberal democratic civic virtue, the inmate restriction is susceptible to two types of errors: it may generate *false positives* (overbreadth) or *false negatives* (underinclusiveness).

In this respect, there is nothing unique about the inmate restriction: all tests (including medical and other scientific tests) are susceptible to these two types of errors.

Herrnstein, Crime and Human Nature (New York: Simon and Schuster, 1985), 2071. What these traits mean is that individuals who frequently engage in criminal behaviour are less likely to delay immediate gratification for future rewards, or to be affected by internalized constraints on their behaviour, than are individuals who resist the ordinary temptations of crime. In large part this explains why criminal behaviour is so highly correlated with age [Wilson and Herrnstein, Crime and Human Nature, 126. A survey of Canadian jurisdictions in 1991 indicated that 48.9 percent of those accused of crime were under the age of 24, and 66.9 percent were under the age of 30. The 18-to-24 year old group alone accounted for almost 30 percent of all criminal accused. See Statistics Canada, Canadian Crime Statistics, 1991 (Ottawa), 57]. The development of empathy and self-control is part of the maturing process that occurs during the passage from childhood through adolescence to adulthood [Wilson and Herrnstein, Crime and Human Nature, 147]. Consequently, the tendency toward criminal behaviour decreases with age in most people, and the persistence of criminal behaviour into adulthood strongly suggests the underdevelopment of these two character traits. Indeed, the rationale for restricting the right to vote of serious and/or persistent criminal offenders is similar to the rationale for denying the right to older adolescents: these offenders exhibit unusually impulsive and self-centered behaviour that renders them temporarily unfit to exercise the political rights and responsibilities of citizenship.

This is especially true in the administration of criminal justice, where the inherent limitations of human decisionmaking make it impossible to design tests of guilt or innocence that are completely free of error. Some errors are worse than others, however, and in criminal justice decisionmaking our system tolerates false negatives (i.e., acquittal of guilty persons) more readily than false positives (i.e., conviction of the innocent). This fact is reflected in the constitutional status given to the presumption of innocence in the Charter, as well as by the other procedural hurdles designed to make it difficult for the state to negate that presumption.

The general lesson that one can draw from the administration of justice in Canada is that, where governments seek to limit rights, it is always preferable to err on the side of underinclusiveness. Consequently, it is of less concern that persons whose criminal conduct has gone unpunished escape disenfranchisement than the alternative possibility that innocent people might be unduly denied their right to vote (especially since the right to political participation is presumptive in liberal democracies). Thus, the possibility that the inmate restriction might generate false positives when it tests for civic virtue is more serious than the alternative error.

There is one important reason why the inmate restriction generates as few false positive results as can be expected from any such test. In Canada, inmates typically have long records of involvement in serious criminal behaviour. For example, an overview of the federal inmate population during 1991-92 shows that 40 percent of these offenders were serving *at least* their second penitentiary term.³² Given how few Canadians are ever committed to federal institutions (the average commitment rate was 2.3 per 10,000 adults

³². Correction Services Canada/National Parole Board, *Basic Facts About Corrections in Canada,* 1992 Edition (Ottawa: Supply and Services, 1992).

from 1989-94),³³ an individual history of multiple commitments is clearly indicative of disrespect for the rule of law. Moreover, almost 60 percent of those incarcerated in 1991-92 had committed crimes against persons, including homicide or manslaughter (16.4%), sexual offences (12.9%), other violent offences (6.2%), and robbery (23.3%).³⁴

A 1995 survey of the federal inmate population amplifies these data. The study randomly selected a sample of 654 inmates (representing 4.5 percent of the total inmate population) and reviewed their conviction history records to determine the total number of convictions under the *Criminal Code*, the *Narcotics Control Act*, and the *Food and Drugs Act*. According to this analysis, the average number of convictions for this sample of federal inmates was 29.5 per inmate.³⁵ Moreover, 75.3 percent of the sample had amassed more than ten convictions during their criminal careers. The sample also included a significant number of inmates with *more than fifty* convictions each (13.5 percent of the total sample). What these data confirm is that the federal inmate population consists of individuals with long records of involvement in serious criminal activity. To the extent that federal and provincial inmates in Alberta share these characteristics, and there is no reason to believe that they do not, they are surely one group in society that can be identified as lacking respect for the rule of law.

The Individual Costs and Collective Benefits of Inmate Disenfranchisement

The impact of inmate disenfranchisement on individual inmates is relatively small. First, the disenfranchisement is temporary and is restored upon release from

^{33 .} Statistics Canada, *Adult Correctional Services, 1993-94* (Ottawa: Supply and Services, 1994), Table 41, p. 90.

^{34.} Correctional Services Canada/National Parole Board, Basic Facts About Corrections, 1992 Edition.

Abt Associates Report, 10 April 1995, p. 7.

custody: the right to vote is not extinguished, it is merely suspended. Furthermore, in most cases the period of disenfranchisement is relatively short. For example, 89 percent of sentenced admissions to provincial custody in Alberta are for sentences of less than one year, and 95 percent of those admissions are for sentences of less than two years. Similarly, almost 76 percent of individuals committed to federal institutions are serving sentences of less than five years. Consequently, even assuming that inmates serve their entire sentences, the vast majority of inmates will, at worst, be excluded from voting in one provincial election while serving their current sentence. Second, losing the right to vote does not mean losing the right to political and legal representation. On the contrary, inmates retain access to counsel and the judicial system in order to protect their legal rights while in custody. In addition, various advocacy groups exist to voice the political concerns that are common among inmates. Finally, the costs of the restriction are only imposed following conviction for serious and/or persistent criminal behaviour by a judicial process characterized by a high degree of procedural formality.

These costs are balanced against an important collective benefit that is often overlooked in analyses of inmate disenfranchisement. This benefit stems from the fact that, in liberal democracies, voting belongs to a category of activity that is best described as "public-spirited collective action." From this perspective, free elections are "public goods" characterized by two key properties. First, every member of a liberal democratic society enjoys equally the general benefits that flow from a regime of free elections.

³⁶. Adult Correctional Service, 1993-94, Table 15, pp. 64-65, Table 39, p. 88.

This would, of course, be the worst case scenario for a specific inmate, since it assumes no grant of parole or other early release from custody.

Dennis Chong, Collective Action and the Civil Rights Movement (Chicago: University of Chicago Press, 1991), 1.

Second, individuals enjoy these benefits whether or not they contribute to free elections by voting.³⁹

The preservation of the free elections on which liberal democracies depend thus presents these political regimes with a classic collective action problem. Such problems arise "when individuals, acting out of pure self-interest, are unable to coordinate their efforts to produce and consume certain public goods they find desirable."40 In other words, by acting according to what everyone agrees is consistent with their own selfinterest, individuals can collectively produce a result that everyone also agrees is inconsistent with the common good. For example, while everyone might acknowledge that paying taxes is in the collective interest, it is in each individual's interest not to pay taxes because (1) their contribution has little impact on the production of the public goods provided by taxes, and (2) they cannot be excluded from enjoying the public goods for which others' taxes have paid. Individuals have an incentive, in other words, to "freeride" on the efforts of others; but if each individual acts this way, no taxes will be paid, no public goods will be provided, and everyone will be worse off. Similarly, although every citizen of a liberal democracy undoubtedly acknowledges the importance of voting for the preservation of the electoral system that makes liberal democracy viable, individual cost-benefit calculations generate a powerful incentive not to vote. The danger, of course, is that, unless a solution is found to this collective action problem, all

³⁹. *Ibid.*, 2-4. In more technical terms, public goods are (1) jointly supplied; (2) supplied equally to contributors and non-contributors to their production; and (3) not susceptible to crowding. A private good, by comparison, can be divided among its beneficiaries in any number of ways, can be denied to those unwilling to pay its price, and disappears once it is consumed.

⁴⁰. Chong, Collective Action and the Civil Rights Movement, 5.

but a small minority of citizens will cease to vote,⁴¹ thus undermining the legitimacy of elections and the viability of the liberal democratic regime.

There are two basic solutions to collective action problems. The most obvious solution is coercion, which is used in the context of voting by Argentina, Australia, Belgium, Costa Rica, Dominican Republic, Ecuador, Egypt, Greece, Italy, North Korea, Peru, Philippines, Singapore, Spain and Turkey.⁴² However, as this list suggests, compulsory voting is not common among liberal democracies; and even where it does exist, the compulsion is not systematically applied.⁴³ The reason for this should be obvious: collective action is a problem for liberal democracies precisely because of their commitment to individual liberty. As James Madison argued, it would be a "remedy...worse than the disease" to extinguish freedom in order to avoid the difficulties caused by liberty.⁴⁴

The second general solution to the collective action problem thus holds greater promise for solving the specific problem of voting in liberal democratic regimes. This solution attempts to alter the individual cost-benefit calculation by providing selective incentives *only* to those who cooperate in the production of the public good (in this case,

Some people would always participate, of course, because the costs of political activity are for them part of the benefits. In other words, they find political participation inherently rewarding. The number of such political activists in any society will always be few, however. See Chong, *Collective Action and the Civil Rights Movement*, 76-77.

⁴². Goodwin-Gill, *Free and Fair Elections*, 42 n.73.

Wilson, *The Moral Sense*, 116. The lack of systematic enforcement is evident from the fact that turnout rates in these countries never reach 100 percent, and range from a low of 68.1 percent (Spain) to a high of 94.6 percent (Belgium). See Everett Carll Ladd, *The American Polity* (4th ed.; New York: W.W. Norton, 1991), 369.

^{44.} Madison, The Federalist Papers, No. 10, 78.

free elections). These benefits can be either explicitly material or social and/or psychological. For obvious reasons, liberal democracies tend to avoid using material incentives (like cash payments) to increase the benefits of voting. In general, liberal democracies generally rely on social and psychological incentives to solve the collective action problem associated with voting. The selective social and psychological incentives that individuals derive from voting flow from the identification of even this minimal form of political participation with civic virtue and good citizenship. In other words, liberal democracies signal to their citizens that, while everyone benefits from the system of government that is maintained through individual participation in elections, only those who *actually* participate (i.e., vote) are entitled to the additional benefit of being identified as good citizens.

The difference between this approach and a more direct enforcement mechanism, such as a legal requirement to vote, is that social incentives operate by creating a sense of duty among citizens to participate. Indeed, duty "is the way by which people cope with the free-rider problem in the absence of coercion."⁴⁷ In essence, the objective is to persuade citizens to honour their obligations to the political system that preserves their equal liberty when there is no prospect for obtaining material rewards or suffering

⁴⁵. Chong, Collective Action and the Civil Rights Movement, 8, 31.

However, liberal democracies do rely on something akin to material incentives to decrease the *costs* of voting. For example, federal and provincial governments in Canada attempt to encourage voting by taking on the entire burden of the registration process, thus reducing the individual costs of electoral participation. This is in sharp contrast to the United States, where registering to vote requires greater individual effort. Similarly, political parties are allowed to reduce the costs of voting by providing transportation to polling places. Nevertheless, the historical relationship between material incentives for voting and electoral corruption make this solution unsatisfactory.

Wilson, *The Moral Sense*, 115.

punishment.⁴⁸ However, the "social rewards for voting depend, to a large degree, on the prior understanding among [citizens] that voting is a mark of a good citizen."⁴⁹ What liberal democratic nations rely on to alter the cost-benefit calculations of their citizens in favour of voting, therefore, is a "sense of duty reinforced by social pressure, a pressure that can be effective only if the sense of duty is widely shared."⁵⁰ Consequently, the task facing liberal democracies is to create the understanding that voting is a mark of good citizenship, and to ensure that the requisite sense of duty is widely shared.

The inmate voting restriction, which denies the right to vote to individuals who have manifestly demonstrated their lack of civic virtue and lack of respect for the rule of law, can thus be understood as one means by which a liberal democratic political regime reinforces the notion that voting is a mark of *good* citizenship. In this way, the restriction contributes to cultivating this sense of duty. The inmate restriction thus provides an important collective benefit by altering the individual cost-benefit calculation that makes voting irrational and threatens the viability of liberal democracy.

The individual costs of the inmate voting restriction are thus superseded by its potential role in encouraging an important type of collectively beneficial behaviour. By denying the right to vote to individuals who have demonstrated their disregard for the rule of law, the restriction reinforces the link between voting and good citizenship, which is important for cultivating the sense of duty that leads people to participate in elections. This collective benefit is significant, since no liberal democracy could long survive if its population consistently failed to participate in its elections.

⁴⁸. *Ibid.*, 100.

⁴⁹. *Ibid*.

⁵⁰. *Ibid.*, 116

Conclusions

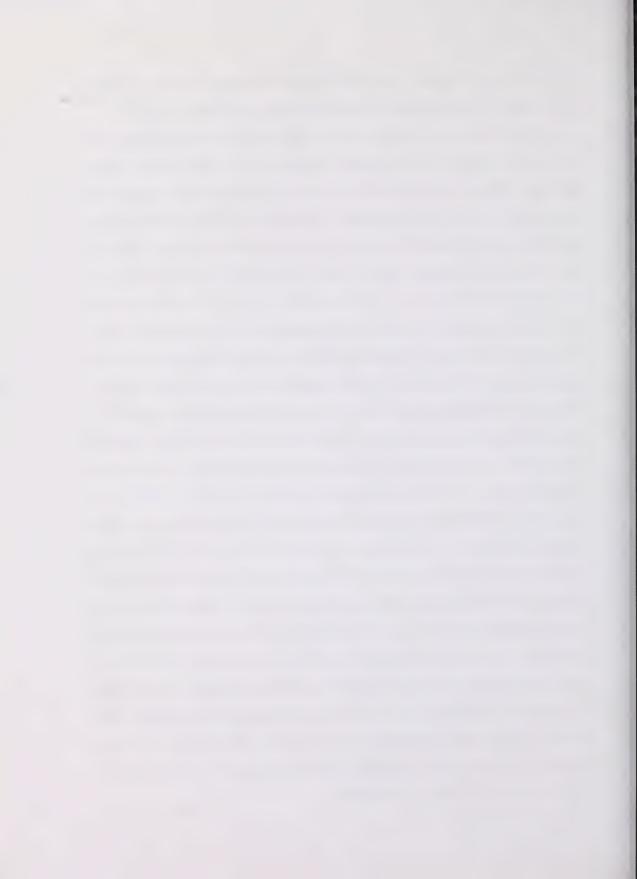
Neither the theory nor practice of liberal democratic states based on the rule of law require that the right to vote be absolute or unlimited. Indeed, liberal democracies restrict access to the franchise in order to maintain a connection between electors and their communities. The general range of restrictions considered acceptable in liberal democracies includes citizenship, age, residency, mental disability, and criminal conviction. As long as voting restrictions are universally applicable and do not impose positive prerequisites on the right to vote, then they are justifiable within liberal democratic theory.

An inmate voting restriction on prison inmates serving all but the shortest of sentences falls within the range of acceptable liberal democratic restrictions on the franchise. First, it does not require that individuals prove, as a prerequisite to voting, that they possess "liberal democratic virtue." In other words, consistent with the liberal democratic presumption in favour of the right to participate in political decisionmaking, the Act does not make proof of lawful behaviour a positive prerequisite to voting, but merely provides that clear evidence of unlawful behaviour will act as a temporary disqualification from voting. The fact that this restriction is linked to voluntary conduct, rather than to personal traits over which individuals have no control, enhances its legitimacy within liberal democratic theory. Second, although the burdens of an inmate voting restriction would, by necessity, fall on only a small proportion of Alberta citizens at any particular time, and that the vast majority of Albertans will never be subject to the disqualification over the course of their lives, it satisfies the principle of universality. All Alberta citizens, regardless of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability, are potentially subject to the restriction if, after receiving the benefit of a legal process consistent with constitutionally-guaranteed rights, they are found to have engaged in criminal conduct voluntarily and with full knowledge of the

moral content of their actions. To be more precise, unlike voting restrictions based on race or gender, the inmate restriction applies in principle to all citizens.

In addition to its theoretical consistency with liberal democratic principles, the inmate voting restriction also promotes important *practical* objectives of liberal democracy. The restriction preserves the integrity of the democratic process by promoting the virtues of civic responsibility and respect for the rule of law that liberal democracies must nurture through its temporary exclusion of individuals who clearly lack those virtues from voting, and through its communication of the general message that breaking the social contract results in the suspension of the most basic rights of liberal democratic citizenship. By communicating this message, the restriction directly links voting to good citizenship, which assists in cultivating the duty to vote. Reducing this incentive is crucial for solving the collective action problem posed by free elections, which every liberal democracy must do in order to maintain its legitimacy and viability. These practical benefits derive from a measure that imposes relatively few individual costs: the right to vote is temporarily suspended for a period of time that, in most cases, is less than the normal period between provincial elections.

To summarize: (1) liberal democratic theory and practice permit the establishment of limits on the right to vote; (2) liberal democratic regimes may use public law to promote norms of civic virtue and respect for the rule of law; (3) restrictions on the right to vote of correctional institution inmates promote civic virtue and respect for the rule of law by educating the general population about the norms of good citizenship; (4) education in the norms of good citizenship is an integral component of policies that preserve the integrity of the democratic process and promote respect for the rule of law; (5) if inmates are granted the right to vote, the result will be to reduce the value of the franchise, to undermine the integrity of the democratic process, and to encourage disrespect for the rule of law. Consequently, inmate voting restrictions are consistent with liberal democratic principles and practice.





PRISONERS AND THE RIGHT TO VOTE

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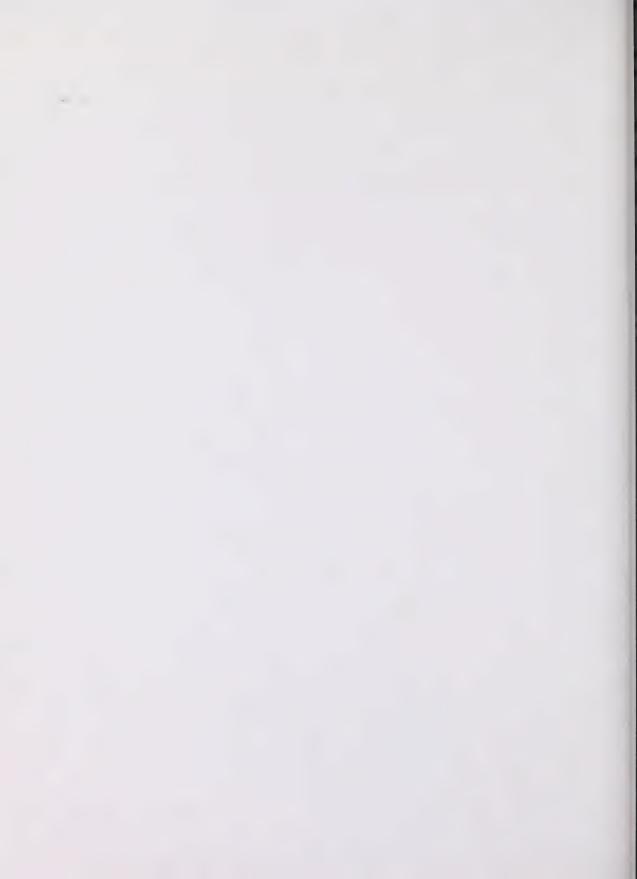


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SUMMARY

Does the inmate voting disqualification benefit liberal democratic society in significant ways? Indeed it does. It provides an important educational support for the minimal degree of public morality required to sustain a liberal democratic regime. Moreover it is the kind of limited and focused support that is entirely compatible with liberal principles. This explains why the inmate disqualification was actually made more explicit as many obviously illiberal restrictions on voting were relaxed. It also explains why some form of the disqualification persists throughout much of the liberal democratic world, and why a number of notable liberal democracies have recently reaffirmed it.

A. IS A DEGREE OF PUBLIC MORALITY, OR RESPONSIBLE CITIZENSHIP, NECESSARY IN A LIBERAL DEMOCRACY? YES.

- 1. The <u>end</u> of liberal democracy is freedom, not virtue (as it was for pre-liberal regimes). Thus liberal regimes eschew the official cultivation of high, or saintly virtue. Nevertheless, a minimal degree of public morality remains the indispensable <u>means</u> of sustaining liberal democracy. Two examples will suffice to demonstrate this fact:
 - a) Lest it degenerate into an illiberal police state, a liberal democracy requires the majority of its citizens to be voluntarily law-abiding—i.e., to obey the law <u>despite</u> the fact that the prospects of being punished are small.
 - b) Lest it lose its democratic credentials, a liberal democracy depends on a significant proportion of its citizens being sufficiently public spirited to vote <u>despite</u> the fact that any individual vote typically has no more significance than the proverbial drop in the bucket.
- 2. Although both law-abidingness and voting are collectively beneficial in ways that almost

anyone can understand, they remain individually irrational in the absence of either coercive punishment or public morality. Absent either punishment or morality, in other words, the temptation to "free ride" on the efforts and restraint of others would be well-nigh irresistable. Since a liberal state must prefer morality to fear of punishment—again, the alternative is a police state—it has a considerable stake in the educational supports for the required degree of public morality.

B. IS THE INMATE DISQUALIFICATION A SIGNIFIANT EDUCATIONAL SUPPORT FOR THE REQUISITE PUBLIC MORALITY? YES.

- 1. Law has always been much more than the instrumental and direct regulation (or prohibition) of specific behaviour; it is unavoidably laden with official interpretations of reality—i.e, messages about the way things are and ought to be. Law cannot avoid sending educational messages. Indeed, the significance of law as a conveyor of minimal shared principles becomes more significant as historical, religious, and cultural traditions become less able to fill this role in our increasingly heterogenous and pluralistic society.
- 2. The inmate disqualification sends important educational messages by explicitly making voting the mark of responsible citizenship.
 - a) The inmate disqualification supports the widespread conviction that those who have manifestly shown themselves to be unwilling to obey the law—i.e., those who have broken the social contract—should be temporarily deprived of their role in making the law. Since this conviction is rooted in attachment to the Rule of Law, to legally support it is to support one of the essential foundations of liberal democracy.

- b) The inmate disqualification supports the notion that voting is not merely a right but also a public spirited responsibility by temporarily denying the vote to those who have manifestly demonstrated their lack of public spirited responsibility. Again, the educational message sent by the disqualification supports an essential foundation of liberal democracy. In particular, it maintains the currency and integrity of the franchise.
- 2. The law can either support—and thus help maintain—widespread convictions, or it can place itself in opposition to those convictions. Both are defensible things for the law to do, depending on the character of the public convictions at issue. The conviction educationally supported by the inmate disqualification—that voting is a mark of good citizenship—is entirely defensible, even essential. It is a matter of no small significance for the law to put itself radically at odds with this highly beneficial conviction.

C. IS THE INMATE DISQUALIFICATION ILLEGITIMATE BECAUSE IT IS UNDERINCLUSIVE WITH RESPECT TO ITS PUBLIC MORALITY PURPOSE? NO

No doubt, there are plenty of irresponsible citizens who are not imprisoned and thus not caught by the inmate disqualification. One could imagine an even more comprehensive (or less underinclusive) link between voting and responsible citizenship being legally made through the establishment of some kind of "character board," which would issue seals of good character (and thus voting qualifications) for all citizens. But this would be decidedly illiberal. The inmate disqualification makes the link between voting and responsible citizenship in the most direct and least questionable way. The necessary message is sent, but in the way most compatible with liberal principles.

D. DO HISTORY AND CONTEMPORARY COMPARISONS SUPPORT THE INMATE DISOUALIFICATION? YES

- 1. History shows the steady decline of voting restrictions based on indirect and unreliable tests for responsible citizenship—e.g., property and literacy restrictions. As these indirect tests were abolished, the more direct and reliable test of criminal conviction or imprisonment was made more explicit. Similarly, with the decline of "civil death" laws, which deprived criminals of their citizenship and property, restrictions on inmate voting (which had been logically entailed by those laws) could be maintained only by making them explicit. This is precisely what happened. In brief, the trend <u>away</u> from illiberal restrictions on voting and treatment of prisoners was accompanied by a corresponding trend <u>toward</u> the focused, and entirely liberal inmate disqualification.
- 2. Comparative study shows that the historical trend toward the disqualification of prisoners has not been reversed in any significant way. While a few liberal democratic jurisdictions have granted prisoners a wholesale right to vote, most continue to preserve some form of the disqualification. Some do so as a matter of explicit constitutional policy. In other cases, the constitution is silent or permissive with respect to the disqualification and it exists as a matter of legislative policy. Nor can such retention of the disqualification be understood as historical inertia, a kind of tardiness in accepting a new trend. In a number of notable instances, including Britain, Australia, New Zealand, and Japan, disqualifications for criminals have been recently reaffirmed and sometimes even strengthened.

Prisoners and the Right to Vote

This paper canvasses arguments and evidence bearing on the question whether it is reasonable for a liberal democracy to disqualify prison inmates from voting (the "inmate disqualification"). It articulates the view that liberal democracy requires a minimally responsible citizenry and that the inmate disqualification is an important educational support of responsible citizenship. Part of the responsible citizenship it supports is simple lawabidingness: the Rule of Law depends on a majority of citizens obeying the law voluntarily, not out of fear of punishment. Another dimension of responsible citizenship underlined by the inmate disqualification is the act of voting itself, which, in the absence of some degree of public spiritedness, is a profoundly irrational individual act; liberal democracy depends on citizens who will vote despite the fact that any single vote typically has the significance of the proverbial drop in the bucket. Liberal democratic regimes, in short, depend on a widespread understanding of the vote as a mark—indeed, a duty—of responsible citizenship. Enfranchising those who have been so manifestly irresponsible as to deserve imprisonment breaks the link between this essential understanding of the vote and educational message sent by the law—indeed, it places the two "radically at odds" with each other.² As "shared history, religion, or cultural tradition" decline in significance in our ever more heterogeneous society, the law's age-old function of articulating minimal common values becomes increasingly important.³ Thus the disjunction between essential public understandings and the educational message of inmate voting acquires a heightened significance. Although Canadian legislatures are undoubtedly free to bring about this

¹ Many historical restrictions of the franchise have been justified in terms of this responsibility argument. Often, as we shall see, this argument was a questionable rationalization and the restrictions so justified have been abandoned. This has not involved a rejection of the responsibility argument, however, and the remaining disqualifications, including the disenfranchisement of criminals, are often defended in its terms.

² Mary Ann Glendon, <u>Rights Talk: The Impoverishment of Political Discourse</u> (New York: The Free Press, 1991), 3.

³ Ibid.

disjunction through the legislative enfranchisment of inmates, it is a disjunction they may quite reasonably seek to prevent. In other words, the inmate disqualification is a reasonable component of the essential attempt to maintain the integrity and currency of the franchise, as well as to emphasize the importance of law-abidingness generally.

Having set out this general argument (and defended it against some common objections) in its first two sections, the paper then moves on in the third section to review the history of franchise restrictions, with particular attention to the responsibility justification, and to set Canadian law on this matter in a broader comparative context.

1. THE RESPONSIBLE CITIZENSHIP JUSTIFICATION OF THE INMATE DISQUALIFICATION

The responsible citizenship justification of the inmate disqualification holds that it provides an important educational support to the kind of responsible citizenship on which liberal democratic constitutionalism depends. In this view, the voting disqualification should not be seen as simply an aspect of the direct punishment of offenders; more importantly, it serves an educative function for society as a whole, helping to maintain a necessary degree of "public morality."

The rudiments of the responsible citizenship justification for the inmate disqualification have been set out by Professor John Courtney.⁴ Courtney suggests that the "small [and not very helpful] literature on the subject... provides an important clue about how society has taken for granted (and, for the most part, likely widely accepted) the values implicit in the centuries-old practice of denying the vote to criminals." He finds it impressive that the inmate disqualification has been taken for granted over the centuries, and down to the present, even as other disqualifications came under scrutiny and were abandoned. He concludes from this that the inmate disqualification gives effect to significant values of continuing importance. Precisely because they have been so taken-for-

⁴ John C. Courtney, "Prisoners and the Right to Vote," a brief prepared for <u>Badger</u> v. <u>A.-G. Manitoba</u>.

granted, however, these values remain implicit. To make them explicit, he argues, one must look for them where they "lie hidden in the historical development of the franchise." 5

It is true, after all, as Friedrich Hayek and others have reminded us, that many principles for which there is widespread support today are often taken for granted rather than explicitly stated, and that because their precise origins frequently have been lost with the passage of time the reasons for their existence must be inferred from developments covering many centuries. So it is with the exclusion of sentenced prisoners from the electoral franchise.⁶

In reviewing the relevant history, Courtney discerns a pattern of justifying franchise limitations in terms of restricting the vote to responsible citizens. He contends, for example, that the "responsible behaviour principle" lies "behind the [earlier] propertied class' monopoly on the ballot." Similarly, the notion that the vote should be restricted to an informed and responsible citizenry lay behind restrictions on voting based on literacy, residence, mental capacity, citizenship, and age. All of these criteria were seen as tests for responsible citizenship. In this light, it is hardly surprising that the most direct and unquestionable test of irresponsible citizenship—criminal activity—also came to serve as a voting disqualification. "It was only natural," writes Courtney, "that the link between voting rights and responsible, non-criminal behaviour would have been established both in the law and in the public's mind." As Courtney notes, the history of the franchise has involved the gradual abandonment of mistaken or unreliable tests for responsible

⁵ Ibid., 2.

⁶ Ibid.

⁷ Ibid., 3-4.

⁸ Ibid., 4.

citizenship (e.g., ownership of property), and the retention or substitution of more direct and reliable tests (e.g., age and penal incarceration). As the franchise broadened, in other words, "the fundamental principle of voting as a <u>responsible</u> act remained unchallenged"—only the way of testing for responsibility changed. In particular, with the "change away from the property qualification" came explicit disqualifications of convicted felons, as well as those engaged in bribery and corrupt electoral practices. In short, tests for the desired responsibility based on status (who one was), such as the property test, came to be replaced by narrower tests based on behaviour (what one had done), such as the inmate disqualification. This history will be reviewed in greater detail in section 3 of this paper.

Courtney is correct in identifying the promotion of responsible citizenship as the central justification of the inmate disqualification. But this does not settle the question. One must still ask whether this kind of public-law promotion of responsible citizenship is legitimate in a liberal democracy. To be more specific, one must address the following sequence of questions: 1) Does liberal democracy require a decent and responsible citizenry? 2) if so, does the required responsibility simply flow from rational agreement with the justice of the regime and its laws, or does it also depend on moral habit? 3) if morality is involved, does it need legal support? and 4) if so, is the inmate disqualification among the legitimate kinds of legal support? We shall consider each of these questions in turn.

1.1. Does Liberal Democracy Require a Decent and Responsible Citizenry?

It is important to recognize that not all four of these questions arouse controversy. Although there is much debate about what is required to maintain a decent and responsible citizenry, the combatants in this debate generally accept the common premise that liberal democratic constitutionalism does indeed require such a citizenry. To appreciate the nature of subsequent disagreements, we must first understand this point of common departure.

⁹ Ibid.

The dependency of liberal democracy on a minimally moral citizen character is simply stated: without citizens of such character, liberal democracy would degenerate into a police state. A liberal democracy depends on voluntary law-abidingness on the part of most people. If obedience were wholly dependent on the fear of punishment, the coercive power of the state would have to expand to such an extent that it could no longer be considered liberal. Where law and interest do not coincide, fear of punishment and self-restraint are the two supports of law-abidingness. A liberal regime must depend more on the latter than the former. This conclusion is underscored when one reflects on how weak fear of punishment must be when, as Landreville and Lemonde report, only only one crime in a hundred is actually punished. George Grant summarizes this perspective:

[T][he free acceptance of a certain minimum of public order on the part of the citizens depends on what those citizens believe to be true about their lives. For example . . . if citizens come to believe that their immediate desires must be satisfied even if it involves breaking the law and will therefore break the law unless they are afraid of being caught, this inevitably brings an increase in police power, to an extent which cannot but be inimical to constitutional government 11

Justice Strayer accepted this point in <u>Belczowski</u>. "[A] liberal democracy," he wrote, "cannot be maintained where laws are not generally acceptable to most people because

¹⁰ Pierre Landreville and Lucie Lemonde, "Voting Rights for Inmates," in <u>Democratic Rights and Electoral Reform in Canada</u>, ed. Michael Cassidy, vol. 10 of Research Studies for the Royal Commission on Electoral Reform and Party Financing (Toronto: Dundurn Press, 1991), 50.

George Grant, <u>Technology and Empire: Perspectives on North America</u> (Toronto: Anansi, 1969), 48. See also Alexander M. Bickel, <u>The Morality of Consent</u> (New Haven: Yale University Press, 1975), 106-107.

otherwise the police measures necessary for effective law enforcement would destroy individual rights and liberties."12

As if this were not bad enough, one must ask how such a police state could recruit a reliable police force from a population that does not voluntarily respect the Rule of Law.¹³ Visions of mercenary corruption spring to mind, but only to crowd out all images of an orderly and free democracy. W.R. Lederman draws the appropriate conclusion:

Law is not primarily a matter of coercion and punishment, rather it is primarily a matter of setting standards for society and devising solutions for critical social problems that attract willing acceptance from most people because these standards and solutions offer some measure of the modern concept of substantial justice.¹⁴

Justice Strayer's <u>Belczowski</u> opinion aptly summarizes the argument. "It is essential to a modern liberal democracy," he writes, "that the majority of people be 'decent and responsible' in the sense of accepting the existence of the state and the legitimacy of its legal system as well as obeying most of its positive laws. . . . "15 The first of our four sequential questions—does liberal democracy require a decent and responsible citizenry—must receive an affirmative answer.

This answer is far from settling the question of the inmate disqualification, however, for it tells us nothing about whether law in general, and the inmate

¹² Belczowski v. The Queen (1991), 42 F.T.R. 107.

¹³ See H.L.A. Hart, <u>The Concept of Law</u> (Oxford: Clarendon Press, 1961), 23; Jennings, <u>The Law and the Constitution</u>, 344.

¹⁴ Lederman, Continuing Canadian Constitutional Dilemmas, 7.

¹⁵ <u>Belczowski</u>, (1991) 42 F.T.R. 108.

disqualification in particular, have a legitimate role to play in inculcating and supporting the requisite citizen character. ¹⁶ We must thus proceed to the second of our four questions.

1.2. Does the required responsibility simply flow from rational agreement with the justice of the regime and its laws, or does it also depend on moral habit?

If rational agreement with the justice of the legal regime is sufficient to secure the required degree of law-abidingness, then there is little need to use law as an educative tool in the promotion of morality. To proponents of the legal support of public morality, however, rational agreement with the justice of laws, though necessary, is not a sufficient condition for law-abidingness. Voluntary law-abidingness certainly depends to some extent on the correspondence between law and prevailing standards of justice, but it is argued that this correspondence is not enough. In this view, simply agreeing with the justice of a law will often not suffice to induce obedience. The moral habit of self-restraint is also required, which is why early liberal theorists placed so much emphasis on morality.

According to this argument, the necessity for the moral habit of self-restraint becomes apparent when we reflect on how common it is to accept the desirability of laws—or, more generally, the propriety of obeying even laws one does not wholeheartedly support—and nevertheless to be tempted by immediate interest to break the law. Even the thief must rationally concede both the justice of the laws that make his activity illegal and the desirability of most people obeying those laws. If too many people followed the thief's example, the order and security required to sustain the production of wealth would degenerate into the proverbial Hobbesian state of nature, a war of each against all in which there would be little incentive to produce anything worth stealing. Thus we must

¹⁶ There is a large contemporary literature in support of this general point. For a sampling see, William A. Galston, <u>Liberal Purposes</u> (Cambridge: Cambridge University Press, 1991; Mary Ann Glendon, <u>Rights Talk: The Impoverishment of Political Discourse</u> (New York: The Free Press, 1991); James Q. Wilson, <u>On Character</u> (Washington D.C.: The AEI Press, 1991; James Q. Wilson, <u>The Moral Sense</u> (New York: The Free Press, 1993); Michael J. Sandel, <u>Democracy's Disconten: America in Search of a Public Philosophy</u> (Cambridge Mass.: Harvard University Press, 1996);

understand theft as the self-interested infringment of rules the thief rationally accepts as just. To use contemporary terminology, the thief has succumbed to the temptation to "free ride" on the law-abidingness he rationally supports for everyone else.

Free riding is, of course, a universal temptation. We all benefit from the order and security provided by effective laws, and we thus rationally support the idea of law-abidingness, especially if the laws correspond to our substantive sense of justice; yet, if only self-interest is consulted, we would each benefit even more if we could evade the cost of law-abidingness while everyone else paid it. The example of taxes comes readily to mind. Most people would prefer to avoid paying even taxes they consider just, although they almost invariably support the necessity of taxation in principle. Each individual would benefit most by evading taxes while everyone else paid them. The money saved is very significant to the individual but an almost imperceptible fragment of overall tax revenues. Thus the isolated tax delinquent will continue to benefit from a virtually unchanged level of government services, while evading his personal share of the cost of those services. In effect, he has his cake and eats it too.

The difficulty is that everyone else is likely to reason the same way. Thus there is a tendency for free riding to become generalized to everyone's disadvantage. Effective government would decline, and the cost in increased instablity would significantly outweigh what each individual saved through tax evasion. In short, if everyone pursues the best individual outcome (evade while others pay), the ironic result is for everyone to be worse off than if they had all paid. Paying along with everyone else might not be as good as evading while they all pay, but it is significantly better than no one paying, which is what happens if everyone succumbs to the temptation to have their cake and eat it too.

But why should this indicate the necessity of moral self-restraint in a liberal society? Surely individuals who can calculate the individual advantage of isolated evasion can also foresee the disastrous consequences of everyone succumbing to the same temptation. Might this rational calculation not be enough to induce everyone (or at least most people)

voluntarily to obey the law? The problem here is that even someone who concedes the benefit of obeying the law has no rational incentive to actually do so unless he can trust others to do the same. For example, to pay taxes while everyone else evades them is to be played for a sucker. In the absence of a fairly strong assurance that others will not evade, it is more rational to evade oneself than to be played for the sucker. In short, law abidingness will not be produced simply by the agreement that it is a collectively rational behaviour. Something in addition to this agreement must be present, something that will create the assurance that others will also obey. The most obvious additional factor is punitive deterrence. Thus we do not rely on the general agreement about the necessity of taxes to ensure their payment; instead we enact tax laws with known penalties for disobedience. The penalties embodied in many other laws, such as those prohibiting theft or fraud, can be explained in the same way.

But in a liberal society punishment alone is unlikely to be enough because, as suggested above, a virtual police state would be necessary to ensure law-abidingness in a population whose obedience was secured mainly by the threat of punishment. The deterrent effect of punishment works to the extent that it is credible—i.e., to the extent that there is a reasonable chance of getting caught. In a society where only the threat of punishment restrains people, the prospect of getting caught varies directly with the size of policing resources. A relatively limited policing power will increase the temptation to free ride, and as more people give in to that temptation the prospects of any particular individual getting caught will decrease, thus further increasing the temptation to free ride (or the desire not to be played for a sucker). The predictable result is spiralling disobedience, which could be stemmed only by increasing the police power. The kind of limited police power preferred by liberal democrats can maintain a credible threat of punishment only if the pool of potential free riders is also relatively limited—that is, only if a substantial majority of the

¹⁷ The game theory model for this conundrum is known as "prisoners dilemma." For a fuller account of the problem in terms of prisoners dilemma see Rainer Knopff and F.L. Morton, <u>Charter Politics</u> (Scarborough: Nelson Canada, 1992), 308-313.

population obeys voluntarily. Yet, as we have seen, simple agreement with the justice of the laws is not enough to secure this voluntary obedience—even disobedient free riders often rationally concede the justice or necessity of the laws they disobey. Thus agreement must be supplemented with the habit of moral self-restraint. It is this generalized habit of self-restraint, not the threat of punishment, that creates the atmosphere of trust needed to induce those who are rationally inclined to be law-abiding to act on their inclination without having to worry about being played for a sucker. These considerations help us understand why many liberal theorists considered moral self-restraint to be a necessary foundation for liberal democratic regimes.

This liberal concern with public morality should not be misunderstood. Liberals clearly substitute freedom for virtue as the end or purpose of political life. The purpose of the political community is not, as it was for pre-modern regimes, to promote high virtue, but to secure the conditions of liberty and comfortable self-preservation. In Plato's Laws we find politics defined as the "art whose business it is to care for souls." John Locke better expresses the modern liberal view. "The commonwealth," he says, is "constituted solely for the "preservation and advancement of life, liberty, the integrity and freedom from pain of the body, and the possession of external things, such as estate, money, furniture, and so forth "19

Nevertheless, although the two themes of liberty and public morality are different, many of the most influential theorists of liberalism saw no necessary opposition between them. Although virtue was no longer the <u>end</u> of political life, a minimal degree of morality remained an indispensable <u>means</u> to the more limited ends of the liberal state. In this view, a liberal regime is not interested in the production of saints, but it depends on at least a minimal degree of morality—enough to sustain the law-abidingness required to maintain

¹⁸ Plato, The Laws, 650b.

John Locke, <u>A Letter Concerning Toleration</u> (The Hague: Martinus Nijhoff, 1963), 14-17, quoted in Thomas L. Pangle, "Executive Energy and Popular Spirit in Lockean Constitutionalism," <u>Presidential Studies Quarterly</u> 17:2 (1987), 257.

order without an excessive resort to force. Even those liberal thinkers who most assiduously emphasized the substitution of institutional checks and balances for virtue as the guarantee of freedom rarely abandoned virtue altogether. Thus James Madison, the great theorist of the American system of checks and balances, conceded in Federalist 55 that

As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us faithful likenesses of the human character, the inference would be that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.²⁰

According to James Q. Wilson the two central components of the minimal "good character" required for liberal democracy are empathy and self-control. "Empathy," for Wilson, "refers to a willingness to take importantly into account the rights, needs, and feelings of others. Self-control refers to a willingness to take importantly into account the more distant consequences of present actions; to be in short somewhat future oriented rather than wholly present oriented."²¹ The widespread existence of this kind of character, Wilson argues, is in fact the best preventative of crime.²² Character, not social conditions,

²⁰ Alexander Hamilton, James Madison, and John Jay, <u>The Federalist Papers</u>, ed. Clinton Rossiter (New York: New American Library, 1961), 346.

²¹James Q. Wilson, <u>On Character</u>, 5.

²²Ibid., ch. 3.

sustains the Rule of Law, and regimes that aspire to the Rule of Law must therefore concern themselves with the character of their citizens.

Wilson supports his claim by examining the difference in crime rates between the second half of the 19th century and our own time. The earlier period was one of industrialization, urbanization, and high immigration, precisely the sorts of conditions associated with rising crime rates a century later. Yet, despite the similar patterns of "economic growth and convulsive social change" crime rates actually declined during the earlier period. Reviewing some common explanations—such as different age structures, urbanization, and economic cycles—Wilson concludes that none of them adequately accounts for the difference, and that the real difference lies in the different approaches to citizen character.

Age, for example, cannot explain the difference. While the median age increased in Philadelphia during the later 19th century, studies show that this does not "explain all of the decrease in crime." Similarly, "[s]cholars who have examined the upsurge in American crime during the 1960s and 1970s have concluded that the shift in age composition explained no more than half the increase, and probably less." The fact is that the increase in crime during the later period is due less to the increase in the relative size of the youth cohort than to "the greater rate at which young people commit crimes." For example, "[t]he probability that a person aged fifteen to twenty-nine would commit a murder in the United States increased by nearly 50 percent between 1955 and 1972." 26

Nor can urbanization adequately explain the differential crime rates in the 19th and 20th centuries. It is true that urbanization tends to increase the crime rate, but as we have seen, the crime rate actually decreased as urbanization proceeded in the later 19th century.

²³Ibid., 26.

^{24&}lt;sub>Ibid</sub>.

^{25&}lt;sub>Ibid</sub>.

^{26&}lt;sub>Ibid., 27.</sub>

Some cause other than urbanization, moreover, is needed to explain the fact that while Philadelphia actually declined in size from the 1950s to the 1960s, young boys growing up there "were more criminal, and more violently criminal" in the latter period than in the former.²⁷ Moreover, large cities in the 19th century had much lower crime rates than similarly sized cities today. And one somehow has to explain the fact that "[w]hile New York City, Istanbul, Manila, and Calcutta all experienced increases in the homicide rate as they grew in population during the first half of the twentieth century, Bombay, Helsinki, Tokyo, Madrid, Belfast, and Nairobi had murder rates that declined as their populations grew during this same period."²⁸

Business cycles are also inadequate explanations of shifting crime rates. It is true that sometimes (in the 19th century, for example) the property crime rate varies inversely with prosperity, but sometimes (in the late 20th century, for example) it does not. Thus "[i]n the United States crime rates drifted down" during the Great Depression.²⁹ "And the most recent increase in crime (and in age-specific crime rates) occurred during a period of unparalleled prosperity (1960-1980)."³⁰ Wilson concludes that in our own time "criminality has been decoupled from the economy."³¹

In view of the inadequacy of age, urbanization, and economic cycles as explanations for the differential crime rates Wilson examines, some other causal factor must be at work. Wilson's own explanation focuses on the very different approaches to character and its formation in these two time periods:

^{27&}lt;sub>Ibid.</sub>

²⁸Ibid.

²⁹Ibid.

^{30&}lt;sub>Ibid., 28</sub>

³¹ Ibid.

In the mid-nineteenth century England and America reacted to the consequences of industrialization, urbanization, immigration, and affluence by asserting an ethos of self-control, whereas in the late twentieth century they reacted to many of the same forces by asserting an ethos of selfexpression. In the former period big cities were regarded as threats to social well-being that had to be countered by social indoctrination; in the latter period cities were seen as places in which personal freedom could be made secure. The animating source of the ethos of self-control was religion and the voluntary associations inspired by religious life, but religion itself did not produce the resulting social control; rather the processes of habituation in the family, the schools, the neighborhood, and the workplace produced it. The ethos of self-expression was secular, but it was not secularism itself that led to the excesses of self-expression; rather it was the unwillingness of certain elites to support those processes of habituation that even in the absence of religious commitment lead to temperance, fidelity, moderation, and the acceptance of personal responsibility.³²

The ethos of self-control and the ethos of self-expression are, of course, broad cultural currents affecting the process of character formation. "If the prototypical novel of crime in the nineteenth century was written by Charles Dickens or Victor Hugo," Wilson asks, "today it would have to be written by whom? Someone, I conjecture, attuned to the effect, not of the economy, but of culture. Tom Wolfe comes to mind."³³

Although liberal democracy does not require saintly virtue, the more modest level of character or public morality it assumes extends beyond simple law abidingness in at least one respect: liberal democracy needs citizens who will be public spirited enough to vote.

^{32&}lt;sub>Ibid</sub>.

³³Ibid.

Although some degree of electoral apathy and non-participation is tolerable, if voting rates drop too low the very meaning of democracy is jeopardized. The problem is that if only self-interest is consulted, voluntary voting is as profoundly irrational for the individual as the voluntary payment of taxes discussed above, and for the same reasons. Given that a single vote has less weight than the proverbial drop in the bucket, why would any individual take the time and effort to become informed on election issues, or even to suffer the inconvenience of visiting to polling station to cast an uniformed vote? Why not free ride on the efforts of others? Since everyone would have the same incentive to free ride, voting rates would decline to levels that could not sustain even the pretence of liberal democracy. One response to this dilemma is to coerce votes, as a few countries (e.g., Australia) have tried to do. Ultimately, however, the best and most reliable counterweight to the collective action problem posed by voting is a public spirited sense of responsibility, a sense that voting is to some extent a duty owed to the community and the public good. Again, we arrive at the conclusion that liberal democracy needs a certain citizen character or public morality.

The cogency of the argument that liberal democracies require a foundation in public morality is shown by the fact that it was accepted even by John Stuart Mill, the acknowledged founder of radical "libertarianism." Mill's On Liberty established the libertarian thesis that law should be used only to prevent individuals from directly and palpably harming others, not to inculcate morality. This view did not lead him to depreciate the importance and necessity of morality, however. Indeed, Mill suggests that a minimal level of morality (i.e., basic self-restraint) is the basis of progress in an atmosphere of liberty, giving mankind "the capacity of being guided to their own improvement by conviction or persuasion" rather than by compulsion. "Liberty," said Mill, "has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion"—i.e., anterior to the time when they are capable of governing their passions. Mill did not hesitate to distinguish between civilization

and barbarism in these terms. "Despotism," he wrote, "is a legitimate mode of government in dealing with barbarians, provided the end be their improvement and the means justified by actually effecting that end."³⁴

1.3. Does the required morality need legal support?: Private vs. Public Production of Public Morality

As the example of Mill shows, the considerable agreement on the necessity of public morality in a liberal democracy does not entail a similar agreement on the question of how to create and sustain this moral foundation. In rejecting the ancient emphasis on virtue as the end of political life, liberal democracy clearly rejected character formation as the central public preoccupation. For some liberal theorists character formation became a completely illegitimate form of government activity; for others some degree of the public promotion of morals" remained necessary and legitimate. Prominent in the former camp is Mill, who argued that "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is selfprotection. . . . His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right,"35 As we have seen, Mill thought that such liberty "has no application, .. [until] mankind have attained the capacity of being guided to their own improvement by conviction or persuasion," but he immediately added that this point had "long since [been] reached in all nations with whom we need here concern ourselves"³⁶—i.e., in the modern liberal democracies. Mill clearly placed great faith in the notion of progress and believed that once the moral foundations of civilization had been established there would be no back-

³⁴ John Stuart Mill, <u>On Liberty</u>, in Currin V. Shields, ed., (Indianapolis: Bobbs-Merrill, 1956), 14.

³⁵ Ibid., 13.

³⁶ Ibid., 14

sliding.³⁷ Indeed, he thought that civilization had reached the point where people would break with prevailing morality not out of passion or interest but mainly because they had been rationally persuaded that what seemed unorthodox was in fact a new and better way. Not only did such moral experimentation not need to be controlled but Mill considered it the engine of further progress. Like Socrates and Christ, the unorthodox were to be prized as pathbreakers.³⁸ Once civilization had been established, in other words, complete moral liberty would lead not to moral decline but to moral improvement. Liberal democracy required public morality, but that morality did not require legal support—indeed, its improvement depended precisely on the absence of legal support. Public morality would be privately produced.

The opposite opinion is expressed by Lord Patrick Devlin, who argues that Mill "did not really grapple with the fact that along the paths that depart from traditional morals, pimps leading the weak astray far outnumber spiritual explorers at the head of the strong."³⁹ In this aphorism Devlin expresses his disagreement with the idea of inexorable progress. Mill was wrong, he suggests, to believe that the required moral foundation of liberal democracy was immune from the forces of barbarism after a certain point of historical progress. Departures from moral orthodoxy, Devlin believes, are at all times far more likely to be undertaken out of passionate self-interest than in the spirit of altruistic moral experimentation—and the former can hardly be expected to contribute to moral improvement.⁴⁰ In short, whereas Mill appears to think that human nature itself will be transformed by historical progress, so that the inclinations that formerly required legal control will decline, Devlin takes his bearings from a more skeptical tendency to "see each

³⁷ Hilail Gildin, "Mill's On Liberty," in Joseph Cropsey, ed., <u>Ancients and Moderns: Essays on the Tradition of Political Philosophy, in Honour of Leo Strauss</u> (New York: Basic Books, 1964).

³⁸ Mill, On Liberty, ch. 2

³⁹ Patrick Devlin, <u>The Enforcement of Morals</u> (London: Oxford University Press, 1965), 108.

⁴⁰ Ibid., 107-108.

new generation born [as] in effect an invasion of civilization by little barbarians, who must be civilized before it is too late."⁴¹ The forces of barbarism, in the latter view, are permanent features of human nature, not historically contingent features that will fade with historical progress. Thus, if legal control of the forces leading to barbarism was ever justified, it is always justified. Devlin concludes that if one concedes the need for public morality (as On Liberty did), and if one doubts inevitable progress (as On Liberty did not), one cannot simplistically reject the legal promotion of responsible citizenship and the Rule of Law.

Consistent with their vision of minimal morality as a means to liberty, liberal societies have certainly emphasized the private production of morality over its legal enforcement. For example, in former times established state religions were the vehicle of public morality. Liberal democracies, by contrast, favour the separation of church and state, thereby banishing religion to the private sphere. Indeed, liberalism was arguably born of the attempt to avoid the warlike divisiveness inherent in the theocratic principle, and its early theorists saw the separation of church and state (or public toleration) as a way of weakening and taming dangerous religious zealotry.⁴² An atmosphere of religious freedom would promote the proliferation of sects, and where no one sect could easily dominate, all would acquire an interest in continued toleration. "A variety of sects," said Madison, "must secure the national councils against any danger" of religiously based "political factions." However, this did not necessarily mean that religion was no longer expected to play a role in the formation of public morality in liberal democracies. Although liberalism was hostile to state-imposed religion, few of its theorists embraced the opposite extreme of state-imposed atheism. Rather, it was thought that a multiciplicity of sects, weaned from their

⁴¹ Thomas Sowell, <u>A Conflict of Visions</u> (New York: William Morrow, 1987), 150.

⁴² See Walter Berns, <u>The First Amendment and the Future of American Democracy</u> (New York: Basic Books, 1977), chs. 1 & 2.

⁴³ The Federalist Papers, 84.

destructive political ambitions, would continue to flourish in the private sphere, less zealous in orientation, but nevertheless contributing to the minimal level of public morality required in the liberal democratic context. Thus the same Thomas Jefferson who spoke of the "wall of separation" between church and state wrote that "the only firm basis" for "the liberties of a nation" is the "conviction in the minds of the people that these liberties are of the gift of God," that "they are not to be violated without his wrath." Jefferson's views in this respect vividly illustrate both the liberal belief in the importance of morality and the faith that the required morality is best produced privately.

Nevertheless, although liberal democracies have relied less than pre-modern regimes on the overtly public promotion of morality, public involvement has never been abandoned altogether. Public education, for example, has never been understood simply as a way of transmitting information, but has always been expected to help, more or less directly, in the inculcation of good citizenship.⁴⁵ Indeed, despite their dedication to the principle of religious freedom, liberal regimes have often encouraged religious instruction and practice in the schools. In the United States this was made possible by understanding the separation of church and state as preventing only the public preference of one church over all others, not the nondiscriminatory public support of religion as such.⁴⁶ This understanding was rejected by the Supreme Court in 1947 in favour of a more radical "wall of separation" between the two realms,⁴⁷ but American policymakers still strive to find ways of aiding religious private schools and facilitating prayers and religious instruction in the public schools.⁴⁸ Canada has traditionally gone even further in this direction by

⁴⁴ Thomas Jefferson, Notes on the State of Virginia (New York: Harper and Row, 1964), 156.

⁴⁵ A. Wayne MacKay and Gordon Krinke, "Education as a Basic Human Right: A Response to Special Education and the Charter," 2 <u>Canadian Journal of Law and Society</u> (1987), 85-86.

⁴⁶ Berns, The First Amendment, ch. 1.

⁴⁷ Everson v. Board of Education, 330 U.S. 1 (1947).

⁴⁸ See Ralph Rossum and G. Alan Tarr, <u>American Constitutional Law</u> (New York: St. Martin's Press, 1991), 413-415; Richard E. Morgan, <u>Disabling America, The "Rights Industry" in Our Time</u> (New York: Basic Books, 1984), ch. 2.

providing a separate Catholic stream within the public educational system, a practice that is itself constitutionally protected.⁴⁹ As in the United States, however, religious practices and instruction within the secular stream of the public system are increasingly coming under attack.⁵⁰

Public law in liberal societies has also retained the function of embodying and supporting essential moral principles. Indeed, according to Harvard's Mary Ann Glendon, the educational importance of law has increased over time in pluralistic liberal societies because such societies can no longer rely on shared non-legal traditions to convey and inculcate a common moral sense. "With increasing heterogeneity," writes Glendon, "it has become quite difficult to convincingly articulate common values by reference to shared history, religion, or cultural tradition." Where society's members "are, more often than not, literally strangers," as is increasingly the case in large pluralistic democracies, "a kind of moral vacuum arises." Into this vaccum, says Glendon, flows law. Because law becomes "more pervasive than any other common bond, "53 we increasingly tend to "look to law as an expression and carrier of the few values that are widely shared in our society." Law, she writes, "tells stories about the culture that helped to shape it and which it in turn helps to shape: stories about who we are, where we came from, and where we are going." In the past, biblical, poetic, and historical stories could act as quasi-official articulations of a people's collective aspirations, but in the modern world this function falls

⁴⁹ Reference re Bill 30, An Act to Amend the Education Act, [1987] 1 S.C.R. 1148.

⁵⁰ See Zylberberg v. Sudbury Board of Education (1989), 52 D.L.R. (4th) 577; Corporation of the Canadian Civil Liberties Association v. Ontario (Minister of Education) (1990), 65 D.L.R. (4th) 1 (Ont C.A.); Russow v. B.C. (A.-G.) (1989), 62 D.L.R. (4th) 98.

⁵¹ Glendon, Rights Talk, 3.

⁵² Ibid., 102.

⁵³ Ibid.

⁵⁴ Ibid., 3.

⁵⁵ Mary Ann Glendon, <u>Abortion and Divorce in Western Law</u> (Cambridge Mass.: Harvard University Press, 1987), 8.

mainly to the law. Moreover, to the extent that we regard many legal stories "as expressions of minimal common values," we tend to be "disconcerted by legal norms that seem to be radically at odds with common understandings." Law, in short, is much more than an instrument of direct social control in liberal societies; it is an increasingly important educational device.

Nor should this function of law be dismissed as "merely symbolic." A symbol is a representation of something else; it stands for something other than itself. Legal norms are not symbols of the educational messages they convey. They <u>are</u> those educational messages. If education of the degree of public morality required by a liberal democracy is an important goal, then the law's increasingly important role in that education should be seen for what it is, and not reduced to a mere symbol of itself.

The Supreme Court of Canada adopted an educational view of criminal-law punishments in R. v. Keegstra. ⁵⁷ This case addressed the constitutionality of the Criminal-Code provision making it a punishable offence to "wilfully promote hatred against any identifiable group." Writing for the majority, Chief Justice Dickson upheld the law as a "reasonable limit" on the Charter's guarantee of freedom of expression. He did so in part because the law "serves to illustrate to the public the severe reprobation with which society holds messages of hate directed towards racial and religious groups." ⁵⁸ For Dickson, "the existence of a particular criminal law, and the process of holding a trial when that law is used, is... itself a form of expression" that is valuable not just for its immediate deterrent or even retributive effect but for the message it sends out to society at large. In this case "the message sent out is that hate propaganda is harmful to target group members and threatening to a harmonious society." Not only do "the many, many Canadians who belong to identifiable groups surely gain a great deal of confort from the knowledge that the hate-

⁵⁶ Glendon, Rights Talk, 102.

⁵⁷ R. v. Keegstra, (1990), 117 N.R. 1.

⁵⁸ Ibid., 75.

monger is criminally prosecuted and his or her ideas rejected," but "equally, the community as a whole is reminded of the importance of diversity and multiculturalism in Canada, the value of equality and the worth and dignity of each human person being particularly emphasized."⁵⁹

1.4. Is the inmate disqualification among the legitimate kinds of legal support?

How does the inmate disqualification fit this theory? It teaches the inherent dignity and value of the franchise by linking its exercise to the presumed law-abidingness of the voter, and temporarily disqualifying those who have manifestly failed to respect the law. As Justice Scollin put it in <u>Badger</u> (1986), the inmate disqualification has the objective not only of "stigmatizing those who deliberately breach their duty to society" but also "of preserving the currency of the francise." In this view, the wholesale enfranchisement of prisoners is likely to undermine the value or currency of the franchise.

How would the enfranchisement of prisoners undermine the currency of the franchise? It would do so by bringing the law into conflict with the common sense perception that there is something wrong with allowing those who have been demonstrably unwilling to obey the law to continue to participate in its formation. As Justice Van Camp observed in <u>Sauvé</u> (1988), the inmate disqualification raises the question "whether it is justifiable that the person who breaks the law should participate in the choice of those who

⁵⁹Ibid.

^{60 30} D.L.R. (4th), 108 at 113.

make the law."61 She gave a negative answer to this question. So did Immanuel Kant:

In my role as colegislator making the penal law, I cannot be the same person who, as a subject, is punished by the law; for, as a subject who is also a criminal, I cannot have a voice in legislation.⁶²

Kant was a social contract theorist who, like most other such theorists, believed that those who violated the contract by breaking the law put themselves outside the terms of the contract at least to some extent.

Such social contract reasoning continues to resonate powerfully in our own time. In 1991, for example, the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) wrote that those "who have been sentenced to prison for a period of 10 years or more have clearly violated the social contract. Society is therefore justified in disqualifying them from voting for the duration of their sentence." To be sure, the Lortie Commission thought that the social contract was violated to the extent necessary to merit voting disqualification only in the case of the most serious crimes, as signified by sentences of 10 years or more—crimes whose perpetrators, in the Commission's view, "have gone beyond the pale of civilized behaviour." In this context, however, the important point is the Commission's endorsement in principle of some form of inmate disqualification.

As the Lortie Commission's position shows, it is quite possible to have reasonable disagreements about how far to carry the principle of disqualification. Its position also

^{61 (1989) 66} O.R (2d) 237.

⁶² Immanuel Kant, <u>The Metaphysical Elements of Justice</u>, Part 1 of <u>The Metaphysics of Morals</u>, trans. John Ladd (Indianapolis: Bobbs-Merrill, 1978), 105. For a review of how the thought of many other philosophers bears on the question of prisoner voting see Zdravko Planinc, "Should Imprisoned Criminals have a Constitutional Right to Vote? <u>Canadian Journal of Law and Society</u> 2 (1987).

⁶³ Royal Commission on Electoral Reform and Party Financing, <u>Final Report</u> (Ottawa: Minister of Supply and Services), Vol I, 45.

⁶⁴ Ibid.

shows, however, how strong is the sense that some degree of disqualification is justifiable. (Since the question of degree is a matter of reasonable disagreement, moreover, it seems eminently suited to legislative judgment.) The widespread support for the principle of disqualification surely reflects the view that voting is both the right and the duty of good citizens, that it is tied to good citizenship. This view is part of the public spiritedness that helps to overcome the collective action problem posed by voting. A regime that depends on its citizens being willing to vote despite the extreme insignificance of any individual vote needs to encourage the view that voting is a mark of good citizenship. The enfranchisement of prisoners breaks the link between this necessary view and the law—indeed, it places them in opposition—and thus deprives public spiritedness of one of its most important educational supports.

Even John Stuart Mill took this view of things in his only discussion of prisoner voting. Mill did not think that giving the vote to criminals would do much "direct" harm. Indeed, he admitted that "As far as the direct influence of their votes went, it would scarcely be worth while to exclude them." His concern was with the influence of prisoner voting on what he called the "moral character" of the franchise. "As an aid to the great object of giving a moral character to the exercise of the suffrage," he wrote, "it might be expedient that in the case of crimes evincing a high degree of insensibility to social obligation, the deprivation of this and other civic rights should form part of the sentence."65

2. THE UNDERINCLUSIVENESS OBJECTION

2.1. Three Dimensions of Underinclusiveness

It is objected that inmates are only a subset of indecent and irresponsible citizens; thus, if the point is to disqualify indecent and irresponsible citizens, a law that disqualifies only inmates is seriously underinclusive. There are three components to this argument: (1)

⁶⁵ The Collected Works of John Stuart Mill (Toronto: University of Toronto Press, 1977), 322 n.

Very few of those who commit crimes—and who should thus be disqualified as inmates—are in fact convicted and incarcerated. (2) Many indecent and irresponsible citizens are not defined as criminals and thus would never be inmates. (3) Even those who are defined as criminals, and who we are lucky enough to catch, convict, and incarcerate, do not necessarily become decent and responsible citizens upon release.

2.1.1. Few criminals are incarcerated

In <u>Belczowski</u>, Justice Strayer argued that even if the inmate disqualification had the objective of promoting a decent and responsible citizenry, its means were entirely "arbitrary" because underinclusive and thus failed the "rational connection" component of the proportionality component of the <u>Oakes</u> test. In support of this conclusion, he reported that "there are many law-breakers who are never charged with offences, and a high percentage of those who are never imprisoned."66 In support of this point, Landreville and Lemonde estimate that only about "1 percent of <u>Criminal Code</u> violations result in imprisonment."67

2.1.2. Criminals do not exhaust the class of indecent and responsible citizens

Jeremy Bentham provided a humorous version of the second underinclusiveness argument against disqualifying convicted criminals. Those who were officially defined and incarcerated as criminals, he suggested, were not the worst "criminals" in fact. Indeed, some of the worst among the class of indecent and irresponsible citizens would be found not in prison cells, but holding many (if not most) of the seats in Parliament.

...the most mischievous among criminals, adjudged and denominated such after legal conviction, could not set his foot in either House [of Parliament], without finding himself in company with men in numbers—not to say in a

⁶⁶ Belczowski (1991) 42 F.T.R. 108

⁶⁷ Landreville and Lemonde, "Voting Rights for Prison Inmates," 50.

vast majority—more mischievous than himself: men, whose principal difference from himself, consists in impunity derived from situation and confederacy—in impunity added to greater mischievousness: men, whose mischievousness was acting on the largest scale, while his was acting on a petty scale. Exclude criminals? How will you exclude criminals?⁶⁸

Justice Strayer used similar arguments to demonstrate the underinclusiveness—hence arbitrariness—of the inmate disqualification:

It is arbitrary in singling out one category of presumably indecent or irresponsible citizens to deny them a right which they otherwise clearly have under section 3. It is self-apparent that there are many indecent and irresponsible persons outside of prison who are entitled to vote and do vote; on rare occasions some even get elected to office.⁶⁹

2.1.3. Criminals do not necessarily become responsible upon release

The third component to the underinclusiveness argument considers the inmate disqualification arbitrary because it is applied to criminals only while they are incarcerated, when, in fact, as recidivism rates show, many do not become responsible upon release. If the point is to disqualify those of criminal disposition, it is suggested, a non-arbitrary law would somehow extend to those who retain this disposition after release. Again, Justice Strayer includes this point in his underinclusiveness argument:

⁶⁸Jeremy Bentham, <u>The Works...</u>, J. Bowring (ed.) (11 vols.; Edinburgh, 1838-43), III, 559.

^{69 &}lt;u>Belczowski</u> (1991) 42 F.T.R. 108.

Those who have been identified among the indecent and irresponsible by a sentence of imprisonment do not necessarily become decent and responsible upon release, although their voting rights automatically arise again under the Canada Elections Act. ⁷⁰

2.2. Responses to the Underinclusiveness Objection

The argument that the inmate disqualification, especially as justified by the responsibility argument, is underinclusive and hence arbitrary is open to at least three rejoinders. First, we do not refuse to imprison the criminals we catch because we cannot succeed in catching all, or even a majority of them. Nor do we forego imprisonment because the occasional undetected criminal might get elected to public office. Why, then, should it count against the inmate disqualification that not everyone who deserves it is actually subjected to it?

Second, to the extent that a legal disqualification serves educational purposes, it is not clear why it must be comprehensively applied. The educational "message sent out when a law is used" (Keegstra) need not be diminished by the fact that not all law-breakers are caught. We do not abandon the attempt to deter crime because we cannot catch all law-breakers. Why, then, should we abandon the broader educational goals of a legal disqualification?

Third, and perhaps most important, the kind of underinclusiveness criticized by Bentham and Strayer is, from a liberal perspective, actually a virtue of the inmate disqualification, not one of its vices. Let us imagine a fully inclusive or, in Justice Strayer's terms, "nonarbitrary" law. Such a law would extend not only to all law breakers while in prison but also to all law-breakers who remain indecent and irresponsible after their sentence, as well as to all indecent and irresponsible people who have not yet gotten around to breaking the law. A "nonarbitrary" law, in other words, would disqualify the indecent

⁷⁰ Ibid.

and irresponsible part of the community comprehensively and directly, rather than focusing only on its overtly lawless component. In fact, there are historical examples of such direct disqualification of immoral citizens. For example, the legislation of the New England states in the seventeenth century directly specified good character as the precondition for voting rights.⁷¹ Thus Pennsylvania restricted the vote to "reputable citizens," who were "not convicted of ill-fame or of unsober or dishonest conversation."⁷² Massachusetts disqualified those who were "under conviction of evil carriage against the government or the churches" or who were "vicious in life."⁷³ In Connecticut voters had to "be men of an honest and peaceable conversation,"⁷⁴ and Rhode Island required them to "acknowledge and [be] obedient to the civil magistrates."⁷⁵

Although such provisions avoid the problem of underinclusiveness they are far more objectionable than the more limited disqualification of prisoners. In fact, these old New England laws are much more illiberal than the present inmate disqualification. They are dangerously vague and open-ended, and grant too much discretionary power to their enforcers. They conjure up visions of roving morality inspectors issuing official seals of respectability. In a liberal society it is surely preferable to specify narrowly defined traits that can serve as reasonably accurate tests for the desired "good character." In the past, as Courtney shows, one of the tests was possession of "freehold property." It was assumed that the ability to acquire and maintain property was a reliable index of good character, and the vote was thus restricted to the propertied. These and similar tests have all been abandoned, in part because the connection between them and good character was too loose or too controversial. The only remaining test of this sort is the disqualification of those

⁷¹ This point was first brought to my attention by Courtney, "Prisoners and the Right to Vote," 5.

⁷² Albert E. McKinley, <u>The Suffrage Franchise in the Thirteen Colonies in America</u> (New York, 1905), 275.

⁷³ Ibid., 324

⁷⁴ Ibid., 388.

^{75&}lt;sub>Ibid., 448</sub>

convicted of breaking the law. This is a fairly simple and reliable test because law breakers have demonstrated beyond all doubt their unwillingness to exercise the minimal self-restraint required in a liberal democratic society. Moreover, while it may be underinclusive in not reaching all immoral citizens, the inmate disqualification does not suffer from the overinclusiveness of the former property requirement, which disqualfied the moral poor. In this sense, too, the inmate disqualification is more liberal, for a liberal society must prefer a punishment or legal deprivation that reaches only part of its target to one that overshoots its mark, hitting unintended targets as well.

In this connection, it should again be emphasized that a liberal regime uses law to promote not the high virtue aspired to by the former establishments of religion but a floor of morality below which liberal democratic citizens should not be allowed to fall. The point is to establish a list not of "thou shalts" but of "thou shalt nots," reflecting the Hobbesian reformulation of the Golden Rule: "Do not that to another, which thou wouldest not have done to thyself." This perspective also supports the contemporary preference for negative tests of morality, such as the disqualification of convicted criminals, to the positive requirement of good character evident in the old New England legislation. The legal establishment of such minimal morality is not so obviously akin to the establishment of an official church. The latter clearly undermines liberal democratic constitutionalism; the former is what liberal theorists consider to be its necessary foundation. In this view, those who violate the moral foundation have demonstrated that they are unfit to participate in the democratic formulation of public policy under the Rule of Law in a constitutional regime.

This minimalism accounts not only for the fact that liberal societies do not require positive demonstrations of morality before allowing those who have reached the age of maturity to begin voting, but also for the fact that they often return the right to vote upon release from prison without inquiring whether the released prisoner has become moral in

⁷⁶ Thomas Hobbes Leviathan, ed., C.B. MacPherson (Harmondsworth: Penguin, 1968), 214, emphasis added.

the interim. Because liberal society prefers not to meddle in personal affairs, it simply assumes that upon reaching the age of maturity its citizens have acquired the degree of morality required to sustain the regime, and inquires no further in granting them the right to vote. Since only the minimal morality manifested by law-abidingness is required, there is no reason to deprive anyone of the vote until he demonstrates that he has fallen below the line by breaking the law. Once the sentence has been served, society once again assumes the citizen will be law-abiding and returns the right to vote, at least until it is proven wrong in its generous assumption by the citizen's resumption of illegal behaviour. In sum, the inmate disqualification is far from being the kind of arbitrary law Justice Strayer thinks it is. Indeed, of the kinds of voting disqualifications that might be imagined, the disqualification of prisoners best suits the liberal approach to legally promoting public morality.

3. THE INMATE DISQUALIFICATION IN HISTORICAL AND COMPARATIVE CONTEXT

As mentioned at the outset, Courtney views the history of the franchise in terms of the gradual replacement of indirect tests for responsible voting by more direct and precise tests. To repeat the earlier formulation, tests for the desired responsibility based on status (who one was), such as the property test, came to be replaced by narrower tests based on behaviour (what one had done), such as the inmate disqualification. The first two parts of this section elaborate this claim in more detail; the third part establishes a comparative context for the inmate disqualification.

3.1. Historical Disqualifications

The idea of responsible voting can be broken down into three components. It has traditionally been held that a vote is more likely to be responsible if the person casting it

- 1) has a demonstrable stake in the community and its public affairs;
- 2) takes an active interest in public affairs;
- 3) is adequately informed about public issues.

The various kinds of voting restrictions have been justified as tests for one or more of these elements of political responsibility. The most common way to ensure that voters had a real stake in the community was to enact property or wealth qualifications. This restriction has a long history. For example, in 1430, when a single standard franchise was first established for English parliamentary elections, the vote was restricted to those who had "enough property and social standing to make sure that [they] would be reliable."⁷⁷ Freehold property was considered "an infallible sign of independence and respectability," and voters had to own freehold property worth forty shillings.⁷⁸ The general assumption was that only the men of property could be entrusted with the vote.⁷⁹ This assumption was transferred to Canada by the Constitution Act, 1791, which gave the right to vote in Lower Canada to owners of real property producing an annual revenue of 40 shillings.⁸⁰

The British North America Act of 1867 provided that the franchises of the provinces be used in Dominion Elections until Parliament provided otherwise. Similarly, the qualifications and disqualifications of candidates for the House of Commons were, in the absence of contrary Dominion legislation, to be the same as those for the legislatures of the provinces from which candidates came. During the early years most of the provinces had property qualifications. New Brunswick and Manitoba required ownership of real property worth \$100; Nova Scotia demanded \$150; Quebec had a two-tiered requirement of \$300 in the cities and \$200 elsewhere; Ontario used a three-tiered system requiring \$400 in the cities, \$300 in towns and \$200 elsewhere (this was broadened in 1885 to \$200 in cities,

^{77&}lt;sub>Marchette Chute, The First Liberty: A History of the Right to Vote in America, 1619-1850 (New York: E.P. Dutton, 1969), 16.</sub>

⁷⁸Ibid.

⁷⁹Ibid., 17.

⁸⁰John Garner, <u>The Franchise and Politics in British North America 1755-1867</u> (University of Toronto Press, 1969), 74.

\$100 elsewhere, or an annual income of \$200).⁸¹ Property qualifications were also applied to political candidates, although they were often evaded.⁸²

A common Dominion franchise was enacted in 1885, giving the right to vote to British subjects 21 years of age or over who owned real property worth at least \$300 in the cities, \$200 in towns, and \$150 elsewhere. It also extended the franchise to tenants paying a monthly rent of at least \$2 or an annual rent of \$20.

As in Britain, these restrictions reflected the assumption that those who possessed property had a greater interest in stability and would thus be more moderate and responsible participants in the political process. For example, in the 1885 debates on the unification of the Dominion franchise, 83 the property requirement was defended in terms of the assumption that a citizen who is able to acquire land is "competent and fairly entitled to take an intelligent interest in the affairs of the commonwealth."

The goal of responsible voting was also pursued through literacy and residence requirements, which were thought to promote an informed electorate. Residence requirements were also understood as a way of ensuring a sufficient stake in the community. Racial and ethnic exclusions were often justified in the same way—those excluded were considered to be "foreigners," with no real "feel" for "British" institutions and processes; they therefore lacked a sufficient commitment to the political process to be trusted with active participation. Sir John A. Macdonald's remarks in 1885 are representative of this line of thought:

⁸¹ P.B. Waite, Canada 1874-1896 (Toronto: McClelland and Stewart, 1971), 140.

⁸²Norman Ward, The Canadian House of Commons (Toronto: University of Toronto Press, 1950), 63.

⁸³Section 41 of the <u>British North America Act</u> made the franchise in Dominion elections subject to the existing laws of the various provinces (former colonies) until Parliament chose to provide otherwise.

⁸⁴House of Commons <u>Debates</u>, 1885, p.1709. This argument was used to oppose a right to vote for Indians who, living on reserves, could not own property.

The Chinese are foreigners. If they come to this country, after three years' residence, they may, if they choose, be naturalized....[They have] no British instincts or British feelings or aspirations, and therefore ought not to have a vote.⁸⁵

Over time, many of these disqualifications have been repealed, not because the idea of responsible voting has been abandoned, but because such criteria as wealth or race have come to be seen as inadequate tests for the desired responsibility.

Today two of the most common remaining qualifications for voting are age and citizenship. These are seen as less controversial tests for responsibility. The citizenship qualification, for example, seems to reflect the assumption that only those who have a demonstrable stake in the community should be entitled to vote, and that people who have such a stake will exercise the vote more responsibly. Similarly, it is generally agreed that children should not vote. This is obviously because children are not considered sufficiently mature and responsible to exercise the franchise. The only serious question in this respect is where to draw the age limit, not whether there should be such a limit. One should add that debates about this question frequently involve arguments about demonstrated responsibility ("old enough to fight, old enough to vote").

⁸⁵John A. Macdonald, House of Commons Debates, May 4, 1885, p.1582.

The other persistent disqualification, is that of criminals and those involved in corrupt electoral practices. It appears to reflect the conclusion that someone who breaks the laws of the community—i.e., who breaks the "social contract"—has demonstrated beyond all doubt his lack of commitment to the well-being of the community and his general untrustworthiness. Indeed, for much of western history, criminal activity led to much more than imprisonment and the loss of voting rights. Criminals often suffered what was known as "civil death", a consequence of the legal status of "attainder," That is, they lost the status of citizen, with all of its attendant rights and privileges.⁸⁷ A common feature of such civil death was the "forfeiture" of all property. Sometimes civil death entailed outright "banishment" from the community, including "transportation" elsewhere (as in the transportation of criminals, including Canadians, to such penal colonies as Van Diemans land).88 At the extreme, civil death "outlawed" the criminal, allowing (even encouraging) any citizen to hunt him down and kill him.⁸⁹ Over time, civil death laws gradually became narrower and more focused in scope, abandoning such features as banishment, transportation, and the license to kill; nevertheless, forms of "civil death" statutes, which deprived "the criminal of all or almost all of his civil rights while serving a prison sentence,"90 persisted into this century91—in the case of many American states until well into the latter half of this century. 92 Needless to say, a criminal who had suffered even the milder forms of "civil death"—i.e., loss of citizenship and property—would not have been

⁸⁶ Gordon E. Kaiser. "The Inmate As Citizen: Imprisonment and the Loss of Civil Rights in Canada," Queen's Law Joural 2:11 (1971), 209

⁸⁷ Hazel B. Kerper and Janeen Kerper, <u>Legal Rights of the Convicted</u> (St. Paul, Minn.: West Publishing, 1974), 18-19; Kaiser. "The Inmate As Citizen," 209.

⁸⁸ Kaiser, 211.

⁸⁹ Kerper and Kerper, 18.

⁹⁰ Kerper and Kerper, 19.

⁹¹ E.g., Kaiser, 210, reports that civil death laws persisted in Quebec until 1906.

⁹² Kerper, 21n.

entitled to vote in an age when only propertied citizens could do so. Explicit inmate voting disqualifications were thus redundant during this period.

3.2. Expanding The Franchise

In Britain, serious expansion of the franchise began with the reform acts of 1832, 1867 and 1885, which abandoned the freehold requirement and extended the franchise to leaseholders, tenants-at-will and copyholders. Chute argues that these acts were based on the assumption that "government belonged to the people, not the holders of property." ⁹³

In Canada, the Laurier Liberals repealed the Dominion Franchise in 1906 and reverted to the pre-1885 use of provincial franchises for Dominion purposes. When the Conservatives under Robert Borden re-established the common Dominion franchise, the property qualification had disappeared. Any male British subject of at least twenty-one years who had been resident in Canada for at least 12 months preceding the election could vote. Property qualifications for political candidates had been removed much earlier, in 1874, and earlier still in Britain, in 1858.95

⁹³Chute, The First Liberty, 305.

⁹⁴R.S.C. 1906, c.6, s.10.

⁹⁵Ward, The Canadian House of Commons, 62.

Abandoning the property qualification did not involve a rejection of the idea of responsible voting; what was rejected was the claim that property was an adequate test for responsibility. For example, when non-Indian leaseholders on an Indian Reservation in Upper Canada petitioned in 1843 to have the franchise, the committee established to investigate the matter described the residents as respectable, industrious, loyal, well-behaved, religious and moral. On this basis, the committee judged that the petitioners would use sound discretion in exercising the franchise.⁹⁶ The petitition failed because the franchise still clearly required freehold ownership of land, but the important point in this context is the insistence on good character as a qualification for the franchise, coupled with a rejection of any necessary connection between lack of freehold property and poor character.

Even relatively nominal wealth and property distinctions have been rejected as an inadequate proxy for voter responsibility. A case in point is the U.S. Supreme Court's invalidation in Harper v. Virginia Board of Elections of a state poll tax of \$1.50. The Virginia law also required prospective voters to prepare their own applications, and the state defended this dual requirement as a "simple and objective test of certain minimal capacity for ordering one's own affairs and thus of qualification to participate in the ordering of the affairs of state." Writing for the majority, Justice Douglas declared that "voter qualifications have no relation to wealth nor to paying this or any other tax." "Wealth," he continued, "like race, creed, or color is not germane to one's ability to participate intelligently in the electoral process." According to some observers, this is taking the opposition to monetary tests for voter responsibility too far.98

⁹⁶ Elizabeth Gibbs, <u>Debates of the Legislative Assembly of United Canada</u> (Montreal: Centre de Recherche en Histoire Economique du Canada Français, 1974) Vol. 1843, pp.917-18.

⁹⁷Reported in Ralph A. Rossum, "The Supreme Court as Republican Schoolmaster: Freedom of Speech, Political Equality, and the Teaching of Political Responsibility," in Gary L. McDowell (ed.), <u>Taking the Constitution Seriously</u>: <u>Essays on the Constitution and Constitutional Law</u> (Dubuque, Iowa: Kendal/Hunt, 1981), 132.

⁹⁸See Ibid.

The rejection of explicit ethnic and racial disqualifications also reflected the conviction that there was no correspondence between ethnicity or race and understanding of or loyalty to the constitution and its processes; it did not imply that understanding or loyalty were no longer desirable attributes for qualified voters.

The demise of some exclusions that were racially and ethnically neutral on their face may have been hastened by the fact that they were tainted by racial and ethnic prejudice. Neutral disqualifications sometimes had the indirect effect of disproportionately excluding racial and ethnic minorities. If such groups were disproportionately illiterate or poor, for example, they would be disqualified at a higher rate than members of the majority by literacy or wealth requirements. In some cases, such ethnically "neutral" disqualifications were enacted, in part, precisely to exclude ethnic minorities who were disproportionately unable to meet them. Thus, in 1891,

Premier Roblin stated during the debate on the literacy bill that it was aimed at recent immigrants from the Ukraine and Central Europe whom he feared might gain control and destroy British institutions. He argued that denial of the vote to those of this group who were illiterate was justified since "they take no interest in the affairs of this country and are incapable of learning about them."99

Similarly, in the United States various racially "neutral" disqualifications were often thinly disguised ways of denying the franchise to blacks. After the civil war many southern states attempted to circumvent the voting rights guaranteed to blacks by the new Fifteenth Amendment by requiring poll taxes and literacy requirements that most blacks could not meet. The discriminatory intent lying behind these provisions was made clear by the fact that they were coupled with provisions that exempted formerly eligible voters (i.e., those

⁹⁹Murray Donnelly, <u>The Government of Manitoba</u> (Toronto: University of Toronto Press, 1963), 72-73.

who enjoyed the franchise before it was extended to blacks) and their lineal descendants. These "grandfather" clauses were necessary to prevent the new qualifications from disenfranchising poor and illiterate whites. 100 The United States Supreme Court has upheld literacy tests that are not used to promote discrimination, 101 but Congress banned the practice in its 1965 Voting Rights Act. 102

The traditional disqualifications that have been most resistent to the claim that they are insufficiently related to political responsibility, or that they conceal other, less sayoury agendas, are age limits and the disqualification of imprisoned criminals. Indeed, limitation of the right to participate politically is the one feature of "civil death" laws that has survived the demise of those laws. In fact, as forfeiture of property and loss of citizenship were abandoned as incidents of criminal conviction, and as property qualifications and other kinds of restrictions on voting were rejected, the denial of the franchise to criminals could be maintained only by making it explicit. That is precisely what happened. Thus, along with the 19th century widening of the British franchise, and the concommitant abolition of forfeiture, came the explicit legislative disqualification of people who had been convicted of treason or felony and were under the sentence of death, penal servitude, imprisonment with hard labour, or for a period exceeding twelve months. This incapacity to vote existed for the duration of the punishment or until a free pardon was granted.¹⁰³ (Such restrictions had been legislatively applied to the colonies much earlier: the Constitution Act, 1791, disenfranchised those who had been convicted of treason or felony. ¹⁰⁴) Similarly, in post-1867 Canada, although imprisoned criminals were disenfranchised in federal elections by

¹⁰⁰Guinn v. United States (1915).

¹⁰¹ Lassiter v. Northampton County Board of Elections, 360 US 45 (1959); Alabama v. United States, 371 US 37 (1962); Lousiana v. United States, 380 US 145 (1965).

¹⁰² Upheld as an exercise of Congress's power under the Fifteenth Amendment in <u>Oregon v. Mitchell</u>, 400 US 112, 131-134 (1971).

^{103&}lt;sub>33</sub> & 34 Vict. ch. 23 (An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto), s.2.

¹⁰⁴Garner, The First Liberty, 73-74.

common law as a matter of British inheritance, this exclusion was not explicitly included in federal election legislation until 1898,¹⁰⁵ not long after the last remnants of attainder and forfeiture were removed with the 1892 codification of the criminal law.¹⁰⁶ The addition of this explicit inmate disqualification occasioned no Parliamentary debate whatsoever,¹⁰⁷ suggesting that it was simply making explicit a well understood and uncontroversial understanding.

In sum, the legislative underlining of the criminal exclusion as the franchise was being widened in other respects suggests a desire to focus on demonstrated irresponsibility rather than using less precise tests.

3.3. Modern Comparisons

Although it has recently been questioned, the franchise restriction for criminals remains widespread among liberal democratic jurisdictions. In some countries, it is explicitly mentioned in the formal constitution. For example, in Greece Article 51(3) of the Constitution reads:

The Law cannot abridge the right to vote except in cases where minimum voting age has not been attained or if there is a disability in lawful acts or as a result of irrevocable criminal conviction for certain felonies.¹⁰⁸

107 House of Commons <u>Debates</u>, April 28, 1898, columns 4461-69. These columns cover the debate on s.6, s-s.4, which disqualified criminals, lunatics and paupers. Not a word was said on the first of these.

¹⁰⁵Norman Ward, <u>The Canadian House of Commons: Representation</u> (Toronto: University of Toronto Press, 1950), 234.

¹⁰⁶ Kaiser, 209-210.

¹⁰⁸ See Constitutions of the Countries of the World, ed. Albert P. Blaustein and Gisbert H. Flance (New York: Oceana Publications, 1976), Vol. VI. A different translation, though not one that affects the point in question, was found on the internet at http://www.uni-wuerzburg.de/law/index.html/ (International Constitutional Law Project—henceforth cited as ICL) on January 31, 1997: "The law cannot restrict the right to vote, save in cases of persons who have not attained the required age or on grounds of contractual incapacity or as a result of irrevocable penal sentence for certain crimes."

Article 326 of India's Constitution disenfranchises those:

...disqualified under this Constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice....¹⁰⁹

Luxembourg, Article 53:

The following may not be electors or eligible: 1) persons sentenced to criminal punishment, 2) persons sentenced for minor offenses depriving them of the right to vote, 3) persons of full age under guardianship.

Article 53 of the Luxembourg Constitution goes on to specify that "no other exclusion may be foreseen," and that "The right to vote may be restored to persons sentenced by penal courts by the way of reprieve."¹¹⁰

Malta, Section 58(b):

No person shall be qualified to be registered as a voter...if (b) he is under sentence of death imposed on him by any court in Malta or is serving a sentence of imprisonment exceeding twelve months...or is under such a sentence of imprisonment the execution of which has been suspended....¹¹¹

¹⁰⁹Blaustein and Gisbert (1976), Vol. VII. Confirmed on January 31, 1997 through ICL, which reports the last update as December 1996.

¹¹⁰ ICL, January 27, 1997, reported as valid as of December 23, 1994.

¹¹¹Blaustein and Gisbert (1976), Vol. X. Confirmed on January 31, 1997 at http://dodgson.ucsd.edu/lij/data/malta/context.html. (Updated as of 1996.)

Norway, Section 53(a):

The right of voting shall be lost in the case of any person who: a) is sentenced for criminal offences, subject to such provisions as may be laid down by law.¹¹²

Such constitutional provisions do not always foreclose legislation on the matter. The Greek provision, for example, permits abridgement of the right to vote for criminal conviction, but does not require it. However, the Greek Criminal Code provides for the automatic loss of voting rights in the case of some serious crimes, and permit courts to impose such loss as part of the sentence in other cases. Similarly, in Norway the constitutional loss of voting rights is "subject to such provisions as may be laid down by law." Like Greece, Norway allows judges to make disqualification from voting part of the sentence.

In other countries, the criminal disqualification is provided for by statute alone. For example, in Australia section 93(8) of the <u>Commonwealth Electoral Act</u> disqualifies "a person who (b) has been convicted and is under sentence for an offence under the Commonwealth or of a State or Territory by imprisonment for 5 years or longer; or (c) has been convicted of treason or treachery and has not been pardoned."¹¹⁵

¹¹²Blaustein and Gisbert (1976), Vol. XI. Confirmed on January 31, 1997 at http://odin.dep.no/ud/nornytt/uda-121.html. (Updated as of Feb. 29, 1996.)

¹¹³Summarized in letter from Em. Megalokonomos, Ambassador of Greece to Canada, dated October 14, 1986. Reaffirmed by Constantine Rhallis, Greek Chargé d'Affaires, dated June 5, 1990; reaffirmed by A.Kafiri of the Greek Ministry of Justice, dated April 16, 1994.

¹¹⁴ Summarized in letter by Erik Lund-Isaksen et. al. of the Norwegian Justice and Police Department, dated March 7, 1995. Landreville and Lemonde, "Voting Rights of Inmates," 44, report Norway as having no restrictions, this appears to be mistaken.

¹¹⁵Letter by Leon Pearce, Australian High Commission, March 1, 1994, plus attachments, including copies of relevant legislation.

New Zealand's Electoral Act disqualifies any "person detained in any penal institution pursuant to a conviction." 116

Under section 3 of Britain's Representation of the People Act 1983, "A convicted person during the time that he is detained in a penal institution in pursuance of his sentence (or unlawfully at large when he would otherwise be so detained) is legally incapable of voting at any parliamentary or local government election."¹¹⁷

In the United States, the vast majority of states disqualify persons convicted of felonies, and the disqualification often persists during probation and parole.¹¹⁸

In Germany courts "can deprive a person of the right to vote in matters of public concern for a period of two to five years, if the law contains specific provisions allowing such deprivation." ¹¹⁹

In France judges may similarly make the voting disqualification part of the sentence. 120

Under Japan's Public Officers Election Act "persons imprisoned for committing a crime are not eligible to vote in elections at any level."¹²¹

Nor are these disqualifications necessarily hold-overs from earlier and more "prejudiced" ages. Japan, for example, has since 1990 made its disqualification even more stringent. Whereas it had previously been possible for persons convicted of bribery to vote

¹¹⁶The <u>Electoral Act 1956</u>, s.42(d); confirmed in a letter by Nigel Allordyce, New Zealand High Commission, dated March 3, 1994.

¹¹⁷ Representation of the People Act 1983, Section 3 in Halsbury's Statutes of England and Wales Vol. 15 (London: Butterworth's, 1986), 485; confirmed in letter by David Proud, British Home Office, dated March 28, 1994.

¹¹⁸See Chart entitled "Disenfranchisement Provisions," dated 8/19/93, on p. 403 of <u>Sauvé</u> Appeal Book.

¹¹⁹ German Criminal Code, S.45(5); confirmed in letter by Marlen Sulzer, Embassy of the Federal Republic of Germany, dated Feb. 22, 1994.

¹²⁰ Letter, plus attachments, from Pierre Darbeda, dated 4/3/94, Sauvé Appeal Book, 102ff...

¹²¹ Letter from Martin Thornell, political researcher for Japan's embassy in Ottawa, dated July 23, 1986. Reaffirmed by Andy Julien of the embassy in a letter dated August 23, 1990; reaffirmed by Minoru Masuda, of the embassy, Feb. 17, 1994.

during a suspended sentence, they may no longer do so.¹²² Britain reaffirmed its disqualification of criminals in 1983.¹²³ New Zealand reaffirmed its inmate disqualification as recently as 1990, when it added a new procedural subsection to the disqualification, requiring prison authorities to inform electoral registrars of a prisoner's incarceration within seven days of his arrival at the prison.¹²⁴

The case of Australia is particularly interesting because it has recently considered and rejected a constitutionally entrenched right to vote for prisoners. Beginning in 1968, there have been several unsuccessful attempts to entrench a right to vote in the Australian Constitution. In virtually every case, the proposed reforms have been qualified by clauses permitting the Commonwealth and the states to restrict the voting rights of those of "unsound mind" and of prisoners. In 1987, however, an advisory committee to the Constitutional Commission recommended the constitutional prohibition of both kinds of restrictions. It is was not accepted by the Commission. Noting the inherently controversial nature of the issue, the Commission concluded that, except for some minimal constitutional restrictions, the question of prisoner voting should be left to the legislatures. At this legislative level, the parliamentary Joint Select Committee on Electoral Reform recommended the abolition of the federal inmate disqualification. This proposal failed.

¹²² Ibid

¹²³ Representation of the People Act 1983, section 3 in Halsbury's Statutes of England and Wales (London: Butterworths, 1986), II 484-85.

¹²⁴ The new section 42A of the Electoral Act 1956 was inserted by s. 10 of the Electoral Amendment Act 1990.

¹²⁵ First Report of the Constitutional Commission, I:202-206.

¹²⁶Constitutional Commission, <u>Report of the Advisory Committee on Individual and Democratic Rights under the Constitution</u> (Canberra, 1987), 86-87.

¹²⁷ First Report of the Constitutional Commission, I:221-223.

¹²⁸Ibid., I:222.

¹²⁹ Letter from Sue Strayer, for the Australian Electoral Commissioner, dated June 8, 1990.

Not all Australian jurisdictions have an inmate disqualification, however. The state of South Australia has granted prisoners the right to vote. ¹³⁰ South Australia is not alone in adopting this policy alternative. In Denmark "any Danish subject who is permanently domiciled in the Realm" has a constitutional right to vote "provided that he has not been declared incapable of conducting his own affairs." The constitutional section that guarantees this right (s.29) goes on to say that "It shall be laid down by statute to what extent conviction and public assistance amounting to poor relief within the meaning of the law shall entail disfranchisement." Pursuant to this direction, Denmark has legislatively provided that prisoners have the right to vote by correspondence. ¹³¹ Swedish prisoners are also entitled to vote. ¹³² Similarly, prisoners in Switzerland have enjoyed a right to vote by correspondence since 1971. ¹³³ In Canada, some provinces (e.g., Quebec ¹³⁴ and Newfoundland ¹³⁵) have legislatively granted prisoners the right to vote, and in other jurisdictions (e.g., Canadian Federal Jurisdiction), this right has come by way of court decision. In general, however, legislative attachment to some form of disqualification remains strong and widespread.

Although the inmate disqualification is long-standing and remains common, its precise scope and nature varies among jurisdictions. Acceptance of the general principle leaves open a number of subordinate issues. Should the disqualification apply to all prisoners or only to those convicted of relatively "serious" offenses? What of those who

¹³⁰ First Report of the Constitutional Commission (Canberra: Australian Government Publishing Service, April, 1988), I:202. According to this report, and also according to Landreville and Lemonde, "Voting Rights of Inmates" (1991), 45-46, the other states all have some form of disqualification. According to Landreville and Lemonde, the Northern Territory does not.

¹³¹Letter from Theis Truelsen, Denmark Charge d'Affaires, dated July 23, 1986; reaffirmed in a letter by Hanne Havens of the Danish Embassy, dated March 18, 1994.

¹³²Letter from Maria McMillan, Swedish information officer, dated July 25, 1986.

¹³³ Letter from the Ambassador of Switzerland, dated Dec. 4, 1986; confirmed in a letter by Georges Martin of the Swiss Embassy, dated March 14, 1994.

¹³⁴ Elections Act, S.Q 1979, c.56, ss.51-64.

¹³⁵ The Charter of Rights Amendment Act 1985, S.N. 1985, c.11, s.69.

are imprisoned in default of the payment of a fine? Should they be disqualified while other offenders who are at liberty because they were able to pay the fine are permitted to vote? Should convicted criminals be disenfranchised only during the term of their punishment or for longer periods? Should they be disqualified while they are "under sentence" or only during actual imprisonment? Jurisdictions who retain the disqualification of prisoners have given different answers to these questions. As regards distinctions based on the seriousness of the offense, for example, American states have often limited the disqualification to felonies. Other jurisdictions use the length of the sentence as the determining factor. On the question of the duration of the disqualification, many American states disenfranchise criminals not just during actual incarcertation but also during periods of parole and/or probation. On the Canada, prisoners are disqualified only while serving their sentence.

4. CONCLUSION

The history of the the franchise has been one of gradual expansion. Many of the former restrictions on voting have been abandoned, and rightly so. But the mere existence of a beneficial trend does not mean that it should be taken to the extreme. For example, there has been a definite, and arguably beneficial, trend in recent decades toward families with fewer children; yet no one would contend that this trend should be continued to the point where a majority of couples have no children at all. Similarly, the relaxation of restrictions on voting has not been taken to an extreme. Age and citizenship restrictions, for example, are virtually universal. Some form of inmate disqualification has also proven to be remarkably persistent. Indeed, it was often introduced in explicit form precisely as

¹³⁶See Chart entitled "Disenfranchisement Provisions," dated 8/19/93, on p. 403 of Sauvé Appeal Book.

¹³⁷ In 1983 the Joint Select Committee on Electoral Reform of the Parliament of Australia recommended that the minimum sentence for depriving the vote from prisoners be 5 years. In that same year the Commonwealth Electoral Act increased the minimum sentence that denied the vote from one year to five years (section 23(6)(b)).

¹³⁸ See Chart entitled "Disenfranchisement Provisions," dated 8/19/93, on p. 403 of Sauvé Appeal Book.

other, less reasonable restrictions were being abandoned. Writing in 1918, Charles Seymour observed that the one constant and unquestioned exception to the extension of the franchise has been "criminals and the mentally deficient." This is no longer the case, for, as we have seen, some jurisdictions have recently enfranchised criminals. Still, the weight of history and current practice seems on the side of the criminal disqualification.

The mere longevity and widespread persistence of a practice is not a sufficient argument in its favour, but neither should it be ignored. The fact that the legitimacy of the disenfranchisement of criminals has generally been taken for granted while most other disqualifications have been subjected to searching scrutiny and successful attack indicates the inherent strength of the arguments in its favour.

One such argument concerns the integrity and currency of the franchise. A liberal democracy requires citizens who are willing to contribute to the collective good by voting even though each individual vote considered by itself contributes little to the result. Here a widespread and beneficial belief is at stake, namely, that the vote is more than a right, that it is a duty of responsible citizenship. This belief is nurtured by the law when, by disqualifying inmates, it explicitly links voting to responsible citizenship. Enfranchising inmates breaks this link, setting the law in opposition to a beneficial public opinion. It tells citizens that far from being a mark of responsible citizenship, the vote can be exercized by those who have manifestly demonstrated their irresponsibility. Citizens are also told that they should not worry about giving prisoners the vote because the weight of any prisoner's vote is negligible. Faced with this message, the responsible citizen might well wonder why he should take the trouble to cast his own, similarly negligible vote. Surely not because voting is linked to responsible citizenship! When the law places itself in opposition

¹³⁹ Charles Seymour and Donald P. Frary, <u>How the World Votes: The Story of Democratic Development in Elections</u> (Springfield: C.A. Nichols, 1918), 310.

¹⁴⁰ Landreville and Lemonde, "Voting Rights for Prison Inmates," 78.

to a needed public belief, in other words, it should not be surprised to see the strength and currency of that belief decline.

A second argument demonstrating the reasonableness of the inmate disqualification is based on the Rule of Law. The Rule of Law is not an external set of institutional arrangements within which people live out their lives; it exists most fundamentally in the hearts and minds of the citizens who agree to respect and honour it, and who have acquired the habits of self-restraint necessary to do so. The Rule of Law thus depends decisively on a web of beliefs about the way things are and ought to be. Chief among these is surely the belief that those who make the law must be subject, along with everyone else, to the very laws they make. Without a strong and widespread belief in this principle, the Rule of Law would crumble. But in this respect the Rule of Law is a two sided coin, or a package deal. The intuitive corollary of the notion that law makers must obey their own laws is the conviction that law breakers should not be law makers. How can one simultaneously believe that law breakers can legitimately be law makers and that law makers must obey their own laws? It is not logically possible! Yet this logical contradiction is precisely what the enfranchisement of prisoners asks us to embrace. We are asked to maintain our conviction in the cornerstone Rule-of-Law principle—that our own participation in law making by way of the vote carries with it an obligation to obey the resulting laws—while nevertheless allowing those who have been manifestly unwilling to abide by this principle to continue their law making activity. Such conflicting messages can eat away at the Rule of Law in two ways: first, some may conclude that the cornerstone Rule-of-Law principle is not consistently honoured by the law itself, and will thus come to honour it less themselves. Second, those who hold fast to the Rule-of-Law principle will become angry at the law for placing itself at odds with their cherished (and socially beneficial) conviction¹⁴¹; ironically, this too leads to diminished respect for actual law.

¹⁴¹ Landreville and Lemonde, "Voting Rights for Prison Inmates," 79, suggest that one should not worry about such reactions to a lifting of the voting restriction because "[m]ost Canadians, even some judges, are probably not aware that this restriction exists." Amazingly, this view makes the integrity of the franchise

Liberal democracy and the Rule of Law are fragile plants, uncommon on the world historical stage. They depend as much on the habits and beliefs of heart and mind as they do on external institutional arrangements. Indeed, the latter are fundamentally sustained by the former. The inmate disqualification clearly reflects and nurtures some of the most important foundational beliefs on which liberal democracy and the Rule of Law depend; the enfranchisement of inmates places the law at odds with those beliefs. Since the law is unavoidably an educational as well as a regulatory enterprise—indeed, an educational force that is growing in significance in modern pluralistic societies—it is risky to place the law "radically at odds with common understandings," ¹⁴² especially when those understandings, far from being prejudiced anachronisms, are eminently defensible and even essential to the liberal democratic enterprise.

No doubt there are many other bricks in the educational edifice that supports liberal democratic virtues. Neither democracy nor the Rule of Law is likely to crumble immediately upon the enfranchisement of inmates. But the removal of any brick in the edifice is bound to weaken the entire structure. The effect will be long-term and difficult to quantify, but it will certainly be a negative effect, weakening the convictions that undergird responsible citizenship. Given the fundamental compatibility of the prisoner disqualification with the principles of both democracy and the Rule of Law—and given the evident willingness of many legislature to maintain the disqualification—why travel down this road, why take this risk?

depend on the <u>ignorance</u> of the public! The real question is how people are likely to react if—inevitably when—they find out, and whether the reaction is justifiable.

¹⁴² Glendon, Rights Talk, 102.





Alberta Legislative Assembly Office of the Chief Electoral Officer

Suite 100 11510 Kingsway Avenue EDMONTON, ALBERTA T5G 2Y5 Ph: 403/427-7191 Fax: 403/422-2900

October 28, 1998

Barry McFarland 4th Floor, Bowker Building, 9833-109 Street Edmonton, AB T5K2F8

Dear Mr. McFarland:

Attached is information relating to inmate voting that was put in place for the Edmonton McClung by election. There were no applicants who wished to vote by this system.

I recommend that a legislative change be introduced to allow inmates who have the right to vote, and anyone else who is not on the list of electors, to be eligible to complete a form requesting that they be placed on the list of electors for the specific purpose of being able to use a Special Ballot. This would eliminate the Inmate Questionnaire and ensure that all electors are being treated the same.

Also, attached is a document setting out information on enumeration, registration and voting procedures.

If you have any questions please do not hesitate to contact me.

Sincerely,

O. Brian Fjeldheim Chief Electoral Officer



REPORT OF CHIEF ELECTORAL OFFICER FOR THE CONSULTATION ON PRISONER VOTING

PROCEDURE FOR ENUMERATION, REGISTRATION AND VOTING

The purpose of this report is to outline the process for enumeration, registration and voting as it may apply to inmates in correctional facilities in Alberta.

Part 2 of the Election Act ("Act") deals with two kinds of Election Lists – the Register of Electors (under Division 1) and the List of Electors (under Division 2). The List of Electors is compiled from the Register. Division 3 of Part 2 of the Act deals with Enumerations. Enumerations are one way to create and revise both the Register and the List of Electors.

a. The Register of Electors

Under the Act, the Chief Electoral Officer must establish a Register of Electors. From the Register, the Chief Electoral Officer compiles a List of Electors for all the polling subdivisions of each of the 83 electoral divisions for use during an election (reference s. 11(1)).

There are various ways in which the Register may be created and revised. Door-to-door enumeration using information provided by the Chief Electoral Officer for Canada or any other information obtained by or available to the Chief Electoral Officer may be used as methods to create and revise the Register (reference s. 11(2)).

The Act limits what information may appear in the Register. In particular, two pieces of that information – gender and birth date – can only be used to verify an elector's identification when creating or revising the Register. These items do not appear on the List of Electors. Information in the Register is confidential (reference s. 11(5) and (6)).

Furthermore, access to information in the Register is private except: the Chief Electoral Officer for Canada may use it to create the federal lists of electors, and persons (or their agents) in the Register may check information about themselves, but not others, for accuracy (reference s. 11(7) and (8)).

b. The List of Electors

A separate List of Electors is compiled for each polling subdivision for each electoral division. At the first instance, the Lists are compiled from the Register. The Lists are used in an election to check off those who are eligible to vote (reference s. 13).

Section 14 of the Act sets out the qualifications of persons who are eligible to have their names included on a List of Electors, and section 15 prescribes the information that may be contained in each List.

The wording of section 14 of the Act ("Subject to section 41 ...") means that inmates of correctional institutions were not eligible to have their names on a List of Electors.

c. Enumerations

Door-to-door enumerations have traditionally been the means by which information is collected in order to determine who is eligible to vote and to put the names of all eligible persons onto the Lists of Electors for each electoral division. In the process of building the new Register, the Chief Electoral Officer may conduct an enumeration for any or all electoral divisions he considers advisable in order to prepare the Lists (reference s. 18).

The Act directs who may and may not be appointed enumerators, what materials enumerators must have, and generally provides a procedure for conducting an enumeration. Enumerators perform their duties by visiting each residence in their assigned polling subdivisions and determining all those people residing there who meet a set of qualifications. These qualifications are set out in section 27(1) of the Act.

These qualifications mirror the qualifications for entitlement to be included in a List of Electors set out in section 41. An enumeration gathers the necessary information which creates the Register of Electors and from it, the List of Electors. The key feature of an enumeration is that the enumerator is appointed for a particular polling subdivision, visits residences in that polling subdivision, and records all eligible people who reside in that particular polling subdivision for the Register.

Section 27(3) specifically prohibits enumerators (who are appointed for a particular polling subdivision) from visiting certain places when carrying out an enumeration. The list of prohibited places includes Penitentiaries, correctional institutions, remand centres, and detention centres. This is because enumerations are residence-based.

The task of the enumerator is to determine who is eligible to be added to the List of Electors for that particular polling subdivision. One of the qualifications is residency within the subdivision. Persons in correctional institutions and the other institutions listed in subsection 27(3) do not necessarily have their residence in the particular polling subdivision in which the correctional institution is located. If such persons are entitled to vote – as are students and inmates of remand centres for example – their place of voting will be in their respective appropriate polling subdivisions and electoral divisions as determined by their ordinary residence.

The enumerators submit all the information they have gathered to the returning officers for each electoral division. The Act then provides for ways to make revisions to the information destined for the Register. The information is only available to the person whom the information is about (or their agent) (reference s. 31, s. 32(1) and (2)).

Once revisions conclude, the returning officers submit all the information to the Chief Electoral Officer who creates the Register of Electors from the information and the various Lists of Electors from the Register.

d. Ways to Get on the List of Electors

In order to vote, an elector's name must first appear on the List of Electors for the polling subdivision in which that person resides (reference s. 40). There are several ways in which a person's name is added to the appropriate List of Electors:

- 1. <u>Enumeration</u> as described, one of the ways that an eligible person's name is added to their appropriate List of Electors is through the enumeration used to create the Register.
- 2. <u>Access to the Register of Electors</u> A person who was missed during an enumeration may check the Register under subsection 11(8) and correct any information about themselves, including missing information.
- 3. Revisions to the Lists of Electors after an enumeration When the returning officers give notice under section 31 that revisions may be made to the information collected during an enumeration, a person may correct the information about themselves.
- 4. Revisions to the Lists of Electors once an election has been called: Once an election has been called, section 46 of the Act sets out the procedure whereby persons may check the List of Electors and apply to have the List revised to include their names.
- 5. <u>Swearing-in procedure at the poll</u> During an election, a person who is otherwise eligible to vote but whose name does not appear on the List of Electors for the polling subdivision where the person is ordinarily resident, may be sworn in at the poll under section 91. The person's name is added to the List of Electors and that person is then entitled to vote.

There is no specific prohibition in the Act against the inclusion in the Register of the names of inmates of correctional institutions. There is, however, a prohibition against entering their names on any List of Electors. Section 14 (which lists the qualifications for an eligible voter) is specifically subject to section 41 (which prohibits inmates from voting). Similarly, section 40 (which requires a person's name to appear on the List of Electors before they are eligible to vote) is also subject to section 41.

e. Voting Procedures

There are several ways to vote under the Act.

(i) Voting at Polling Stations in person on Polling Day

All eligible voters whose names appear on the List of Electors may present themselves at their appropriate polling station on polling day and cast a secret ballot. This requires personal attendance (which is obviously impractical or impossible for inmates on election day) (reference s. 84).

(ii) Advance Polls

The returning officers must set up advance polls for each electoral division. Electors who are disabled, who will be absent on polling day, or who are certain election officials may vote in an advance poll. This also requires personal attendance (which is obviously impractical or impossible for inmates on the advance polling days) (reference s. 93).

(iii) Mobile Polls

The Act provides that mobile polls may be set up in a particular electoral division, but only for treatment centres and seniors' lodges having at least 10 in-patients or residents (who would be entitled to vote in that particular electoral division) (reference s. 117). "Seniors' lodge" is defined in section 1(1)(t) and "treatment centre" is defined in section 1(1)(x).

Electors voting at a mobile poll are deemed to be ordinarily resident in the electoral division in which the facility is located on polling day (unless they have previously voted) (reference s. 118).

Electors voting at a senior's lodge mobile poll must either already be on the List of Electors for that polling subdivision or must be sworn in under section 91 and have their names added to the List of Electors (reference s. 120). Electors voting at a treatment centre mobile poll must take the "Oath of Treatment Centre Resident".

Given the concepts of the Act, mobile polls would not be an available mechanism for allowing inmates of correctional institutions to vote – because inmates are not all ordinarily resident in the electoral division in which the institution is located, and mobile polls are only equipped to deal with voting for the particular candidates of one electoral subdivision.

f. Special Ballots

The Act provides for voting by Special Ballot for electors whose names appear on the List of Electors for the polling division in which they ordinarily reside but who cannot vote at an advance poll nor on polling day because they are physically incapacitated, absent from the electoral division, are an inmate (in certain facilities which does not include those specifically prohibited from voting under subsection 41(d)), are an election official, or live in a remote area (reference s. 113(1)).

Eligible electors must apply for a Special Ballot. If their names are on the relevant List of Electors, the returning officers will send out Special Ballot forms to the applicants, who must mark the Special Ballot and follow the procedure for returning the Special Ballot to the returning officer of the particular electoral division in question. Special Ballots are included in the vote count like advance polls. This is all accomplished through mailing or other means of delivery of ballots to and from the electors. No personal appearance is necessary (reference s. 113(2) and (3), s. 114, s. 115 and s. 116).

In February of 1997, the Chief Electoral Officer developed a Contingency Plan to deal with the possibility that he would need to provide for inmate voting during the short period of 28 days of the 1997 election campaign.

The first stage of the Chief Electoral Officer's Plan involved sending out a questionnaire to inmates asking whether they wished to vote. The Act prohibits enumerators from visiting correctional and other institutions in order to enumerate those there. This is because enumeration by this means is residence based. The enumerators gather information to determine who are the eligible voters for a particular polling subdivision based on the voter being resident in that polling area. If inmate voting were to proceed, the Chief Electoral Officer would add the names of the inmates who responded favourably to the questionnaire to the List of Electors for the appropriate electoral division and would arrange for them to vote by Special Ballot.

A necessary prerequisite to voting is that an elector's name must appear on the List of Electors for the appropriate electoral division.

g. List of Electors

Significantly, those people who are inmates at the time of the next provincial election may already be on the Register because:

- (i) they were not an inmate in November 1996 and were enumerated by the door-to-door enumeration and qualified for inclusion in the Register;
- (ii) they were not enumerated but were not an inmate during the time when information collected by the enumerators could be revised under section 31 to 34 of the Act and they were qualified and applied for inclusion in the Register;

- (iii) they were not an inmate during the revision period when the election was called, were otherwise eligible to vote, and they applied to revise the List of Electors and have their name added under section 46 of the Act; or
- (iv) they were not an inmate, were otherwise eligible to vote, applied to be added to the appropriate List of Electors, and were sworn in by the returning officer under Section 91 of the Act.

If inmates' names are not already on the Register, inmates (or their agents) may access the Register in order to have their information added – just like any other citizen- under subsection 11(8). It is not the intention of the Chief Electoral Officer to select inmates for different treatment from all other citizens by specifically directing the question to them of whether they wish to be included on the Register. When the Lists of Electors are prepared, inmates already on the Register will then automatically be included on them. If the prohibition is not struck down, the Chief Electoral Officer will have to determine who is an inmate and insure that their names are deleted from the Lists of Electors prepared from the Register.

h. Gathering Inmates' Information in an Election Period

In the future, inmates who wish to vote in a provincial election may be placed on the List of Electors either by revision to the Register or by revision to the List (but not through enumeration)

At the time of the next provincial election, inmates who are not on the Register and therefore not on a List of Electors, may (if otherwise eligible to vote) apply to revise the List of Electors and have their names added under section 46 of the Act during the election.

i. Voting Options

Once on the List of Electors, arrangements have to be made to allow inmates to vote. The Chief Electoral Officer has considered the options open to him to ensure that inmates have the opportunity to cast a secret ballot. He has discarded all options except the use of the Special Ballot.

Voting at a Polling Station on Polling Day – this requires personal attendance. It is not practical to convey serving inmates from the various correctional institutions in the province to their respective polling stations on election day and the Chief Electoral Officer has discarded this option.

Voting at an Advance Poll – this also requires personal attendance and the Chief Electoral Officer has discarded this option for the same reasons as above.

Mobile Polls – the Act only allows mobile polls to be set up at treatment centres and seniors' lodges. These are defined under the Act. Correctional institutions do not fit the definitions. Therefore, the Chief Electoral Officer has discarded this option.

Further, using a mobile poll for a correctional institution would have the effect of allocating all the eligible inmates in that institution to the electoral division where the institution is located because of the residency-deeming provision in section 118. This might give a skewed population base in that electoral division

The residency-deeming provision also goes against the idea of ordinary residence being the place where a person intends to return when he is absent from it. Residence in a correctional institution is not permanent as it may be in a seniors' lodge or treatment centre.

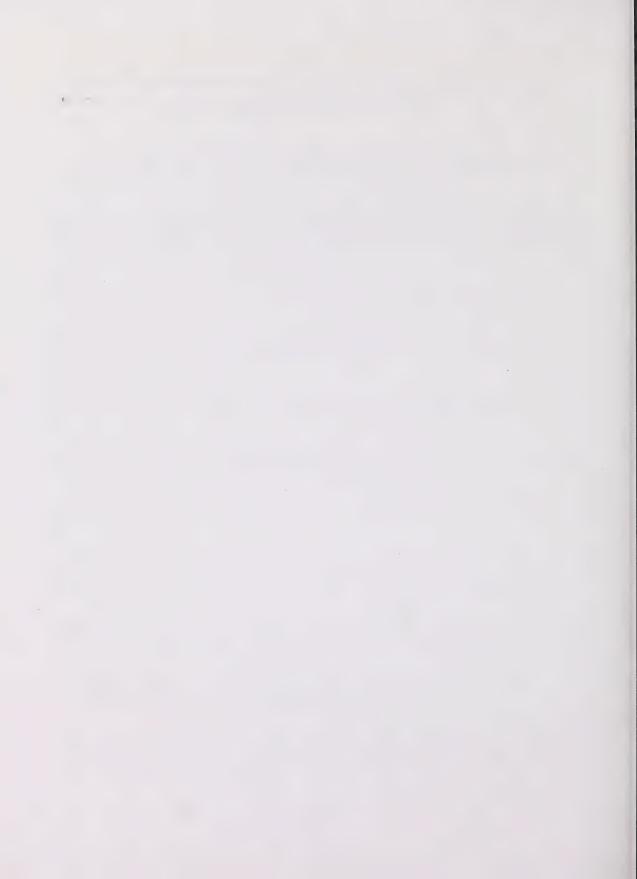
The Special Ballot – this seems designed to deal with the situation potentially facing the Chief Electoral Officer, and this is the option he proposes to use.

j. Use of the Special Ballot

Inmates of some facilities already qualify to use Special Ballots under section 113(1) of the Act as electors whose names appear on the List of Electors for the polling division in which they ordinarily reside but who cannot vote at an advance poll nor on polling day because they are absent from the electoral division.

Inmates could, therefore, apply for a Special Ballot. This would comply with section 113 of the Act (if the reference to section 41 were deleted).

Under subsection 113(2) of the Act, an elector must apply to the returning officer of the appropriate electoral division for a Special Ballot. A Special Ballot will be issued if the elector is on the List of Electors. Under the Act, an elector may apply for the ballot at some time between the issue of the writ and the closing of polls on polling day. In future, inmates could use this system just like any other elector.



Special Ballot Process for Collection of Inmates' Votes

- The April 17, 1998 judgment by the Alberta Court of Appeal gave inmates the right to vote in provincial electoral events. The judgment struck down section 41(d) which formerly prohibited inmates from being added to the List of Electors and voting.
- Inmates must meet all other eligibility criteria in order to vote: they must be at least 18 years of age, Canadian citizens and ordinarily resident in the electoral division for at least six months prior to the election.

A prison is not considered to be a place of ordinary residence, so a determination of previous residence must be made. This is done using the Inmate Questionnaire which is provided to inmates who request to vote by Special Ballot.

The inmate is asked to provide his place of ordinary residence by completing the questionnaire. The protocol for determining ordinary place of residence follows, in order of priority:

- the residence where the inmate lived and plans to return to after imprisonment, or if no such residence exists,
- the residence of a spouse, parent, dependent, relative or companion with whom the inmate plans to reside after imprisonment, or if no such residence exists,
- the residence where the inmate lived prior to imprisonment, or if none exists,
- the address where the inmate was arrested, or if unknown,
- the location of the last Court at which the inmate was convicted and sentenced.
- A notice will appear in local newspapers, along with the publication of the Proclamation, indicating
 - the electors who were not enumerated during the 1996 General Enumeration, and
 - those who are absent from their ordinary place of residence in Edmonton-McClung,

are to contact the Returning Officer to be added to the List of Electors.

Inmates will be included in the Special Ballot Notice.

- If you receive an inquiry from an inmate:
 - Confirm that he is not already on the List following the General Enumeration.
 - Confirm that he meets the eligibility criteria (at least 18, Canadian citizen).
 - Confirm that he resided in the electoral division for at least six months, using the protocol set out above.
 - Explain the Questionnaire and Special Ballot process to him.
 - Obtain the address of the correctional facility and mail out the Inmate Questionnaire. Confirm that he is aware of the deadline for returning the Special Ballot to you.

Note: the questionnaire can be sent and returned via facsimile, if the inmate has access to a fax machine.

• Once the questionnaire is received in your office, add the inmate's name to the List for the appropriate psd, and mail out a Special Ballot.

Note: the inmate may have someone collect and return the Special Ballot on his behalf, or may arrange for a courier at his expense.

All other procedures relating to the Special Ballot Poll will then apply.

Office of the Chief Electoral Officer #100, 11510 Kingsway Avenue Edmonton, Alberta T5G 2Y5

Telephone: (403) 427-7191 Facsimile: (403) 422-2900

INMATE QUESTIONNAIRE

All information gathered from this Questionnaire may only be used for the administration of elections and for the democratic purposes associated with election campaigns.

Section 41(d) of the Election Act, which prohibited inmates from voting, was struck down by the Alberta Court of Appeal on April 17, 1998. Therefore, eligible inmates will be able to have their names added to the List of Electors and to vote by Special Ballot at the June 17, 1998 by-election in Edmonton-McClung.

If you wish to be added to the List of Electors in order to vote in the by-election, Elections Alberta must confirm three things:

(1) that you are eligible to vote,

First Name

Part A: Consent

- that your ordinary place of residence, for at least six months prior to your imprisonment, was in Edmonton-McClung, and
- (3) that you wish to request a Special Ballot.

Please sign and return this form to the Returning Officer.

Please note that this questionnaire should be forwarded to the Returning Officer as soon as possible. Once it is received in his office, he will mail out a Special Ballot which you must complete and return. Your completed Special Ballot must reach his office by the close of polls on Polling Day (8:00 p.m. on June 17, 1998).

I have read the statement above and agproviding this information on a voluntar	gree to participate in this Questionnaire. I ac y basis. Please check this Box. → □	cknowledge that I am
OR		

Middle Initial

I do not want to be registered or participate in this Questionnaire. Please check this Box. → □

Date: Signature:

Name and Address of Correctional Institution:

Part B: Are you qualified to be an El you a Canadian citizen?	ector		Yes 🗅	No 🗆
Are you over 18 years of age?			Yes 🗆	No 🗆
Before you were sentenced, had you Edmonton-McClung for at least six me			Yes 🗅	No 🗆
If you answered "Yes" to all three que If you answered "No" to any of these return this form to the Returning Offic	questions, you do not qua			
Part C: Which Electoral Division? Question 1: Do you have a place of residence in Ed entence?	monton-McClung where y	ou intend to return	to after se Yes □	erving yo No 🗆
f "Yes" please provide the address of Street Number or Name	that residence and go to F City or Town	Part D. Province	Posta	al Code
luestion 2:				
o you have a spouse, parent, depend lan to reside after serving your senter	nce?		Clung with Yes □	
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Cou	rthouse	Address (if Known)	City or To	own	Province
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Crestion 5:







Assistant Deputy Minister
Correctional Services Division

10th floor John E. Brownlee Building 10365 - 97 Street Edmonton, Alberta Canada T5J 3W7 Telephone 403/427-3440

October 13, 1998

Mr. Barry McFarland, MLA c/o 4th Floor, Bowker Building 9833 - 109 Street Edmonton, AB. T5K 2E8

Dear Mr. McFarland:

This is in response to your letter dated September 25, 1998 addressed to Mr. Hank O'Handley. Mr. O'Handley recently retired from the Alberta Public Service and I have been appointed Acting Assistant Deputy Minister of the Correctional Services Division. I would like to take this opportunity to respond to your letter on behalf of the Division.

In your letter you invite input regarding proposed amendments to the *Election Act* in response to the Alberta Court of Appeal's decision that incarcerated offenders have the right to vote in limited circumstances. I understand that the Court envisioned that offenders incarcerated solely as a result of the failure to pay fines, offenders sentenced to terms of ten days or less, and persons remanded in custody and not yet convicted, or convicted but not yet sentenced, should be eligible to vote.

In making this submission I have concentrated not on the philosophical issue of whether offenders should be able to vote, rather I have focused on the operational issues that do and will arise as a result of holding a vote in a correctional centre. Notwithstanding the Division's commitment to facilitate legislated voting procedures in our correctional facilities, there is no question that the conducting of a vote in such a setting is disruptive. Normal prison routines are geared to maintaining operational and security requirements, moving offenders to and from the Courts, and ensuring offender work and treatment routines are carried out. Procedures such as conducting an enumeration or having polling stations on site, disrupt these routines and must be designed and carried out in a way that can ensure the safety of the public (including elections personnel), correctional staff and offenders.

OCT 1 3 1998

LEGAL RESEARCH

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By way of background, the province operates a total of ten adult facilities (of which some also house remanded young offenders), eight adult camps, four correctional facilities just for youth, and three young offender camps. All of these facilities may house a limited number of offenders who would meet the Court's criteria for voting. Given that not all offenders are incarcerated in the communities in which they may be eligible to vote, there may be logistical issues related to ensuring that proper ballots and information about ridings and candidates are available for offenders.

In terms of the number of offenders who may be eligible to vote based on the Court of Appeal's opinion, a recent one day "snap shot" review of the corrections database showed that 130 offenders were in custody solely for failure to pay fines, 51 were serving sentences of ten days or less, and 636 offenders were remanded and awaiting trial or sentencing (note that seven of these remands were young offenders of voting age). The majority of these offenders are housed in the Calgary and Edmonton Remand Centres, and these two facilities will be most significantly affected by changes in the *Election Act*. Ironically, it is at these centres where security is the greatest, movement of inmates to and from Courts is the busiest, and the offender turnover rate is the highest.

With reference to offender turn over, is important to note that the provincial correctional population, by virtue of its short average sentence, changes very quickly. The population identified by the Court of Appeal, in particular, has a very short stay in custody. The average remand offender was in custody 11 days in 1997/98. Fine defaulters normally qualify for an early release to the community to perform community service work in lieu of fine payments and are in custody for a matter of days only. This means that the short duration of custody will make it difficult to properly enumerate eligible voters in custody unless enumeration and voting occur almost simultaneously.

As a final observation, in order to ensure the integrity of the vote it is thought that the Chief Electoral Officer will need to provide expert advise and support to correctional staff who, of course, are not knowledgable about the provisions of the *Election Act* and election procedures.

In closing this submission I want to reiterate that the Correctional Services Division is committed to facilitating the required voting procedures pursuant to legislative authority and Government direction. Toward this end, we are prepared to work with the Chief Electoral Officer and his staff to ensure that voting procedures are properly established.

Thank you for the opportunity to provide input into this important issue.

Yours sincerely,

a. Halit

Arnold Galet









